TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 208.

SAMUEL LEWIS, PETITIONER,

vs.

G. OLIVER FRICK, UNITED STATES IMMIGRATION INSPECTOR, &c.

N WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 13, 1912.
CERTIORARI AND RETURN FILED APRIL 22, 1912.

(23,086)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1913.

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CERTIFIED COPY.

In the United States Circuit Court of Appeals, Sixth Circuit.

No. 2200.

G. OLIVER FRICK, United States Immigration Inspector in Charge, Appellant,

vs.

SAMUEL LEWIS, Appellee.

Record.

On Appeal from the United States Circuit Court for the Eastern District of Michigan, Southern Division.

Frank H. Watson, United States Attorney; J. Edward Bland, Assistant United States Attorney, Attorneys for Appellant.
Florian, Moore & Wilson, Attorneys for Appellee.

Filed Jul- 11, 1911. Frank O. Loveland, Clerk.

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TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

In the Matter of the Petition of SAMUEL LEWIS for Writ of Habeas Corpus.

(Filed April 13, 1911.)

To the Honorable District Judge:

Your petitioner, Samuel Lewis, respectfully represents that he is a laborer, a person of Jewish Ancestry, and a lawful resident of the United States.

That on November 24th, 1910, in the City of Detroit, in said District, your petitioner was arrested by United States Immigrant Inspector, Leonard S. Coyne, upon a Department (Telegraphic) warrant of arrest, issued out of the Department of Commerce and Labor of the United States, by the acting Secretary thereof, and dated, November 23rd, 1910, charging that your petitioner is an alien; that he entered the United States on November 17, 1910, at the Port of Detroit, Michigan, via Grand Trunk Railway; that he has been convicted of, or admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry

into the United States; that he procured, imported or brought into the United States, a prostitute or woman, or girl, for the purpose of prostitution, or other immoral purposes; that at the time of his entry in the United States, he was a person likely to become a public charge, and that he is unlawfully within the United States, in that he entered without inspection.

And your petitioner further represents and shows that he is now deprived of his liberty and is detained in custody of G. Oliver Frick, United States Immigrant Inspector in charge, in the County Jail, at said City of Detroit.

And your petitioner further represents that on to-wit: the 24th day of November, A. D. 1919, while under arrest and con-
2 finement as aforesaid, United States Immigrant Inspector, Leonard S. Coyne, against your petitioner's will, and without informing him of his rights in the premises, subjected your petitioner to an oral examination, taking adjournments therefrom to November 30th, 1910, December 7th, 1910, and December 8, 1910, and that afterwards, to-wit: on the 19th day of January, A. D. 1910, while under arrest and confinement as aforesaid, United States Immigrant Inspector, Leonard S. Coyne, again subjected your petitioner to a further oral examination, a copy of the record of which said examination, marked Exhibit "A" is hereto attached.

And your petitioner further represents that his detention and imprisonment as aforesaid, is illegal and void, in this, to-wit: First, that on March 23rd, A. D. 1911, a jury in the District Court for the Eastern District of Michigan, Southern Division, returned a verdict of not guilty on an indictment against your petitioner, copy of which is hereto attached and marked Exhibit "B," containing substantially the same allegations against your petitioner as charged in warrant of arrest issued out of the Department of Commerce & Labor, and dated November 23rd, 1910, by virtue of which your petitioner is now deprived of his liberty and detained in the custody of G. Oliver Frick, United States Immigrant Inspector, in charge, as aforesaid.

Second, that said acting secretary of the Department of Commerce and Labor without authority to make and enforce the order and warrant of deportation under which your petitioner is now held, for the reason that your petitioner is a lawful resident of the United States, and as such is not subject to the surveillance and control of the Immigration Inspectors or the Department of Commerce & Labor, in that your petitioner entered the United States at the port of New York, in the State of New York, on to-wit: September 20, A. D. 1904, and was then and there examined and admitted by the United States Immigration Inspectors at that point.

Third. That your petitioner's detention and imprisonment under said order and warrant of deportation is against public policy and contrary to the laws of the United States, guaranteeing to all lawful residents thereof the rights, privileges and benefits properly appertaining and accruing to your petitioner under the guarantees of the constitution and the laws of the land.

Fourth. That your petitioner has not been committed
3 and is not detained by virtue of any judgment, decree or process, issued by a Tribunal of compe-ent jurisdiction, upon which to base and order a warrant of deportation.

Fifth. That the Department of Commerce & Labor, and the acting Secretary thereof, were without jurisdiction to hear and determine your petitioner's rights in the premises, and that the sole and exclusive jurisdiction thereof was in a Justice, Judge, or Commissioner of the United States Court.

Sixth. That said warrant and order of deportation is not preceded by nor founded upon any hearing, findings or judgment of a Court of competent jurisdiction, wherefore, to be relieved of such unlawful detention and imprisonment, your petitioner prays that a writ of Habeas Corpus, to be directed to G. Oliver Frick, United States Immigration Inspector in charge, may issue in his behalf and that your petitioner may be wholly discharged and released from his custody and imprisonment and that he may be brought forthwith before the court, to do, submit to and receive what the law may direct.

SAMUEL LEWIS,
GUY W. MOORE,
Att'y for Petitioner.

Witness:
JOHN J. SMOLENSKI.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 4th day of April, A. D. 1911, personally appeared before me, a Notary Public in and for said County Samuel Lewis, who being first duly sworn, says: that the matters and facts stated in the foregoing petition are true to the best of his knowledge, information and belief.

JOHN J. SMOLENSKI,
Notary Public, Wayne County, Michigan.

My commission expires July 14, 1914.

EXHIBIT A.

Report of Hearing in the Case of Samuel Lewis, alias Frezesuskir, alias Przysuskier, alias Nossek, alias Naess.

Minutes of Hearing in the Above Entitled Case Taken and Transcribed by Albert L. Anderson, Under Clerk.

In accordance with instructions contained in Department Telegraphic warrant of arrest, dated Nov. 23, 1910, copy of which is hereto attached, marked "Exhibit A" and made a part of this
4 record, Samuel Lewis, alias Frezesuskir, alias Przysuskier, alias Nossek, alias Nuess was taken into custody at the Wayne

County Jail, Detroit, Mich., on Nov. 24th, 1910, by Leonard S. Coyne, U. S. Immigration Inspector, who then and there conducted hearing directed on above mentioned warrant, and adjourned the case until Nov. 30, 1910. Further adjournment was made until Dec. 7th, 1910, at 3:00 P. M., and final hearing given Dec. 8th, 1910, at 3:00 P. M., at Wayne County Jail, Detroit, Mich. At the request of U. S. Commissioner of Immigration at Montreal, Quebec, Canada, contained in his letter No. 10873-997, dated Dec. 28th, 1910, an entirely new hearing was given said Samuel Lewis, alias Frezesuskir, alias Przysuskier, alias Nossek, alias Nuess on Jan. 19th, 1911, at Wayne County Jail, Detroit, Mich., at 4:10 P. M., by Leonard S. Coyne, U. S. Immigrant Inspector, in accordance with Department warrant No. 53124-7-A, dated Nov. 23rd, 1910, copy of which is hereto attached, marked "Exhibit A-2," and made a part of this record.

Said alien being able to speak and understand the English language, an interpreter was not employed.

Said Samuel Lewis, alias Frezesuskir, alias Przysuskier, alias Nossek, alias Nuess was then informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country from which he came, it being alleged: That he is an alien, that he entered the U. S. on Nov. 17th, 1910, at the port of Detroit, Mich., via G. T. R., that he has been convicted of or admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he procured, imported, or brought into the U. S. a prostitute or woman or girl for the purpose of prostitution or other immoral purposes; that at the time of his entry into the United States he was a person likely to become a public charge; and that he is unlawfully within the United States in that he entered without inspection. Alien was offered opportunity to inspect the warrant of arrest and the evidence upon which it was issued, of which right he availed himself.

Said alien was then duly sworn and the following testimony presented:

Q. Do you understand the English language?

A. Yes.

Q. Do you wish to examine the warrant and the papers upon which it is presented?

A. (Alien takes warrant and looks it over.) A. Yes, that is all right.

Q. What is your name?

A. Samuel Lewis.

Q. Have you any other name?

A. Prezysuskier.

Q. Any other name?

A. Nossek.

Q. What is the name you went by besides Samuel?

A. That is all, Sam, all the time.

Q. You have a right to be represented by counsel at this hearing, do you wish to be so represented?

A. Sure.
Q. Have you a lawyer now?
A. Yes, sir.
Q. Is he present?
A. Sure he is.
Q. Mr. Grossman is your counsel?
A. Yes, sir.

COYNE to Grossman:

Q. What is your name?
A. Joel E. Grossman, attorney at law, No. 619 Moffat Bldg., Detroit, Mich.
Q. You are here representing this alien as his counsel?
A. Yes.
Q. How long have you been his counsel?
A. From the time of his arrest.
Q. His arrest in the matter of the U. S. District Court case?
A. No, from the time of his arrest in connection with these alien cases and all other cases that have been placed against him.

COYNE to SAM (Alien):

Q. In your testimony at another time you stated that you did not have counsel or did not wish to be represented by counsel?
A. I didn't know whether I would have or not. My relations were going to see.
Q. How old are you?
A. About 27 or 28.
Q. Where were you born?
A. Mlawa, Eocka, Gub., Russ-Poland.
Q. Are you of the Hebrew race?
A. Yes.
Q. Where was your father born?
A. I guess in the same State but in a different town.
Q. And your mother where was she born?
A. In the same State.
Q. What was your father's name?
A. Chaskel Przysuskier.
Q. And your mother's name?
A Eva.
Q. Did your father ever live in the U. S.?
A. No, sir.
Q. Is he alive or is he dead?
A. Alive and mother is too.
6 Q. Both live in the same place?
A. Yes, Mlawa.
Q. Have they any street address?
A. No, it is a small place.
Q. How many years did you stay there?
A. Until I was about 15 years.
Q. That is about 13 or 14 years ago?
A. It must be.

Q. Did you go to school there?
A. Yes, sir, I passed the public schools.
Q. Where did you go from this town where you were born?
A. My father sent me to Warsaw and gave me in to learn a trade, gave me money for it.
Q. How long did you remain in Warsaw?
A. Until I was about 20 or 21.
Q. That is about 6 years ago?
A. Yes.
Q. What did you do while you were in Warsaw?
A. Worked for a jeweler.
Q. Making jewelry in a factory?
A. Yes, sir.
Q. Did you follow any other trade there?
A. No, sir.
Q. Are you married or single?
A. I got married there.
Q. Who did you marry?
A. Leah.
Q. What other name?
A. I don't know, they didn't need any other name, it was a time the socialism was going on.
Q. You mean to say that you married a woman and didn't know her other name?
A. No.
Q. Did you know her parents?
A. No, she told me once her father's name was Isaac.
Q. Did you ever know they had any other name?
A. No.
Q. When were you married?
A. About 7 years ago.
Q. In what place?
A. Warsaw.
Q. Who married you?
A. A Rabbi.
Q. What Rabbi?
A. A Jewish Rabbi.
Q. What is his name?
A. Smolevich or something like that.
Q. Was he a fully authoized Rabbi?
A. I don't know, but he wasn't a Government Rabbi.
Q. What kind of a Rabbi was he?
A. A district Rabbi there are lots of Jewish Rabbis in the old country but a Government Rabbi has to be appointed by the State Department.
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Q. Did you get a license to be married?
A. No, sir.
Q. You mean to say in Russia you don't need a license?
A. No, sir.
Q. What sort of a ceremony did you go through with Leah?

A. Chupa-Kadusan. In the Hebrew interpretation it is "marriage ceremony."

Q. Did you stand under a canopy?

A. Yes, sir.

Q. Was anyone present at the ceremony?

A. Sure, couple of friends.

Q. Who were they?

A. I don't remember their names, maybe if I saw them I would remember them.

Q. Did the Rabbi give you any paper after you were married?

A. No.

Q. Did he give Leah a paper?

A. Yes.

Q. Where is that paper now?

A. I don't know, I suppose she has it. She is supposed to keep that.

Q. After you were married where did you go with her?

A. Stayed there in Warsaw.

Q. Did you and she live together?

A. Yes.

Q. How long did you live together?

A. About 5 or 6 months.

Q. Did you have any children?

A. No, sir.

Q. Have you ever had any children by her?

A. No.

Q. Why did you and she separate?

A. Because I heard stories for instance, that she didn't do right and she was going out with some boys when I was to work and I told her to stop that and to be nice woman in the house and then we started fighting and I left her and she told me she never was married before and I found out that she was married before and then I asked her so she said she got a divorce from him but still she ought to tell me this before I married her, and that is the reason I left her and went to the U. S.

Q. That was 7 years ago?

A. Yes, sir.

Q. What month was it?

A. When I got married to her it was about 2 weeks before Jewish Christmas.

Q. Did she have any children then?

A. No.

Q. Did she have any at your house?

A. No, not at my house.

8 Q. As far as you knew, she had none?

A. No.

Q. Were you told that she had had some children?

A. Yes, I heard later on.

Q. You heard afterwards that she had had children before your marriage?

A. Yes.

Q. Did you know to whom she had been married?
A. No.
Q. Did you ever see the man?
A. No.
Q. Ever hear his name?
A. No.
Q. Do you know whether he is now living?
A. No.
Q. Have you ever known a man by the name of Moshe Hochberg?
A. That is the first time I ever heard, it was in the paper.
Q. You saw it in the newspaper?
A. Yes.
Q. After you separated from Leah where did you go?
A. I went to my town and from my town to the U. S.
Q. How many years ago was that?
A. Last Sept. was 6 years ago.
Q. And when you left your native town how did you go to come to the U. S. A.?
A. I went to London and from there I bought ticket to the U. S.
Q. Where did you land in the U. S.?
A. New York.
Q. What was the name of the boat?
A. Stattendam.
Q. What was the date of your landing at New York?
A. 20th of Sept., 1904. A day behind or before I don't know which.
Q. Now when you landed in New York were you examined by the Immigration authorities?
A. Yes, sir.
Q. Who were you going to?
A. I had an address of some friends, a friend from my town.
Q. What was his name?
A. I don't know.
Q. On what street did he live?
A. Essex St.
Q. You were going to that friend?
A. Yes.
Q. Who came with you on the boat, *and* friends of yours?
A. None of my friends.
Q. And after you left Ellis Island, or were examined by the Immigration office, did you go to your friends?
A. No, sir.
Q. Where did you go?
A. The address was wrong and they left me down at Ellis Island and I was short of money and then I got an address from the
9 steamer, a fellow was there and he gave me an address and told me that I should notify his friends there that he was coming and I was over there and notified his friends and left my grip there.
Q. What was this man's name that gave you this address?

A. I don't know.
Q. Who were these people to whom you went and notified?
A. I don't know what their names were, Charles or Challis or something like that.
Q. What did you do after you went to New York?
A. I looked for work.
Q. Where did you work?
A. On Henry St., then I moved from there to Monroe St. and then to Madison St.
Q. Various places in New York?
A. Yes.
Q. What work did you do?
A. Jewelry business, waiter in Krauss & Globerg's.
Q. How long did you work for them?
A. About 6 weeks.
Q. From there where did you go?
A. Wandered around idle about a month then got a job for $5 per week for the New York Neckwear Co.
Q. How long did you work for these people?
A. About 7 months. Then I asked for a raise and they said they could not afford it.
Q. After that where did you work?
A. For a tailor, an operator. A friend of mine told me how to operate and I worked at that for $8 per week and then I worked at that 2 weeks and then there was a strike, unbasted children's jackets, they made.
Q. How long did you continue to live in New York?
A. Until I came here.
Q. When was that?
A. I came here in March, 1910.
Q. That is last March?
A. Yes.
Q. Have you been living here ever since?
A. No, sir, what you mean?
Q. Have you been living here since coming here last March?
A. Yes.
Q. Where?
A. No. 153 Napoleon street, with my relative.
Q. What is his name?
A. Harry Newman.
Q. What have you been doing?
A. Paper hanging and painting.
Q. Have you ever been back to the old country?
A. No, sir.
Q. Since you landed at New York you have continuously resided in the U. S.?
A. Yes, sir.
Q. How many times were you arrested while you lived in New York?
A. Once.
Q. What for?

A. I don't know myself. It was a time when everybody got arrested.

Q. What was the charge that was made against you?

A. I don't know what charge.

Q. Were you tried in court?

A. They put me in court and the judge didn't ask me anything and some fellows said something.

Q. What did they say?

A. I don't know. Said I was walking around there.

Q. Did they fine you?

A. Yes; $10 fine.

Q. Did you pay your fine?

A. Yes, sir.

Q. You were allowed to go then were you?

A. Yes.

Q. Was your picture taken by the police in New York?

A. Yes.

Q. That was about two years ago?

A. Yes.

Q. What was the date of that arrest?

A. I don't know.

COYNE: I wish to introduce at this point, letter from the New York Immigration office, dated Dec. 8, 1910, marked "Exhibit D," and is now made a part of this record. And also a picture of the alien taken by the Police Department at Detroit, Mich., marked "Exhibit B," and now made a part of this record. And enclosed with the letter from New York dated Dec. 1910, is a picture from the Rogue's gallery in New York, which is of the same person as shown by the pictures of the police department. And I also wish to introduce at this point letters which were introduced *on* the case of Bennie Berman, alias Ike Willis, marked "Exhibit B—20 to 28th inclu.," which now constitute a part of this record, by reference to said Bennie Berman, alias Ike Willis case.

GROSSMAN: I have no objections.

COYNE to alien:

Q. Now at this arrest in New York you were accompanied by two men?

A. Yes.

Q. What were they, burglars or crooks?

11 A. No, they came over and asked me if I had a match and just then a policeman come and had all of us arrested.

Q. Are you wanted by the police at any other place?

A. I am wanted no place.

Q. Did you ever see this Leah again since you have come to America?

A. Not until she came here.

Q. And on what occasion did you see her?

A. On the train.

Q. Where?

A. At Windsor. I met her over there.

Q. When was that?
A. 17th of Nov., 1910.
Q. How did you happen to meet her at that time?
A. I was home not working one day and Berman comes up and asks for me and I don't know how he got my address and I was surprised that a strange man should ask for my name but my cousin, Mrs. Newman, told him he should come back at night when I got home from work and he came back and said "I have regards for you" and he said, "Are you Lewis" and I said "yes" and he asked me questions, if I was ever in Warsaw and I said yes, and he said, "I have regards from your wife" and I pretended to say that I haven't got any, because I kept myself single, but still when he mentioned the name I knew what it was and I said, "Where is she, what does she want of me" and he said she is not here, she is in Canada, but I will let you know when she gets here. On the 17th I went to work in the morning and at dinner time when I got back Mr. Berman was there waiting for me. I said, "what is the matter" and he said, "I received a telegram that my wife and your wife are coming here and I want you to come over with me to Windsor and meet them," and I said, "she will come over to the Immigration office they should sent for me over there and she could get out." Well he said it was better for me to come over there, "for you know how a woman is;" he said, "She might make you trouble" and I didn't think about it, so I went there and met her and I went over to Windsor and stood there about 15 or 20 minutes and got a train to the station at Windsor and met her there but very cool and came over here to the Immigration office.
Q. Then what did you do?
A. I got on a train.
Q. Come across the river with her?
A. Yes.
Q. While you were on the train did an Immigration officer question you?
A. Yes.
Q. What did you tell him?
A. That she was my wife.
12 Q. What did you say about yourself?
A. That I just came from Detroit and that I am a Detroit man and always lived there and showed him my first papers.
Q. Did you have your first papers with you then?
A. Yes.
Q. What did he say?
A. He said, "all right, I will let you off" and then the other fellow handed him some other tickets for the baggage, Mr. Berman it was, so he told me and told him, "you can go there alone to the Immigration office," so we went there.
Q. At the Immigration office you took an oath that this woman was your wife, didn't you?
A. Yes.
Q. After you left the Immigration office with Leah where did you go?

A. Went over to the depot, she went and recognized her trunk and then we went right to my home at 153 Napoleon street with her.

Q. And she and you stayed there?

A. No, she didn't stay there, she said the house isn't clean and some things, that is a woman's way, and I said, "all right you can go wherever you want to."

Q. Did she come back the next night?

A. The next morning she came back to see me. I wasn't working the first half day, and I was waiting for her.

Q. You and she stayed in the house all day?

A. Dinner time came and I wanted to open up the trunks and she put up the reason not to break them up now, and my cousin came to get some special work done and I went away to work. That was Friday.

Q. Where did she stop that night?

A. I don't know.

Q. Did you see her the next day?

A. Yes, dinner time.

Q. She was over to you again?

A. Yes.

Q. And where did she stop on the night of the 19th?

A. I don't know; she wasn't with me.

Q. Did you hear that she had been arrested?

A. Yes, Sunday morning.

Q. That was the last you saw her?

A. Yes; Saturday dinner time.

Q. The reason you and she didn't stop together at 153 Napoleon street was because she didn't wish to?

A. Yes.

Q. But you had a room ready for her?

A. Yes. It wasn't quite ready but I was willing to take her in.

Q. When you went over to Windsor and came across the
13 river on the train it was with the intention to take her to your place?

A. To have a house for ourselves and not be single around places all the time.

Q. Now, isn't it a fact that you never knew this woman before, until Berman got you to go over to Windsor to meet her so that she could get in without any trouble, by saying that she was your wife?

A. No.

Q. Have you ever been married since then?

A. No, sir.

Q. Have you ever taken out a divorce?

A. No, sir.

Q. Have you got your first papers with you now?

A. Not with me, I guess Mr. Grossman has them. (Counsel presents original copy, also certified copy of this alien's declaration papers, declaring his intention to become a U. S. citizen, which is introduced as "Exhibit F," and now made a part of this record.

Q. When did you begin to use the name of Lewis?

A. Since after I came over here, as soon as I started working for Krauss & Globerg.

COYNE: Is there any objections to my introducing the same Exhibits as were introduced in the previous hearing?

GROSSMAN: I have no objection to their introduction.

COYNE: I hereby introduce Phila. letter dated Dec. 7th, 1910, marked "Exhibit C" and now made a part of this record. I also wish to introduce here, statement made by this alien before Inspector Coyne at police headquarters, Detroit, Mich., on Nov. 21, 1910, marked "Exhibit E" and now made a part of this record.

COYNE to alien:

Q. You are now under an indictment of the Federal grand jury in Detroit, Mich., on a charge of bringing this alien woman into the United States for an immoral purpose?

GROSSMAN:

A. We admit that he is under an indictment on a charge of bringing an alien woman into the U. S. for an immoral purpose.

COYNE to alien:

Q. Did Leah Lewis tell you when she came here that she had left a man by the name of Moshe Hochberg in London?

A. No, sir.

14 Q. Did Berman tell you so?

A. No, sir.

Q. Since you have been locked up here in the jail hasn't Berman told you that she is the wife of a man by the name of Moshe Hochberg?

A. No, never told me anything.

Q. According to this letter from the Phila. office, you were known to the police of Phila., is that so?

A. No, sir; I never was there.

Q. Did you ever hear that this woman was a shop-lifter?

A. Never heard it until I saw it in the papers, that she was arrested in Detroit.

Q. Where is her father now?

A. He must be in Europe.

Q. Have you heard from him since coming out here?

A. No, sir.

Q. Is your father living?

A. Yes; I got letters some times from him.

Q. What was it, that at the Immigration office you stated that this woman had been living in Detroit, and had simply gone across that day to Canada?

A. She told me that.

Q. That is when you got on the train at Windsor she told you what to say to the Immigration office?

A. Yes.

Q. And you went to the Immigration office and said that?

A. Yes.

Q. And you have said ever since what you were told to tell?
A. No, than I said she had come from Canada and they made me pay $4 head tax for her.
Q. Do you know a woman by the name of Fannie Belmargis?
A. No, sir.
Q. Do you know a man by the name of Max Greenberg?
A. No, sir.
Q. Wasn't Greenberg at No. 153 Napoleon street?
A. No.
Q. Do you know a man by the name of Cuttler?
A. (No answer.)

GROSSMAN: That is objected to as incompetent, immaterial and irrelevant.

ALIEN:

A. No, sir.

COYNE to alien:

Q. Isn't Cuttler a member of a gang of crooks of which you and Berman are also members?
A. I don't know; I am not a crook, you can mix me up with others if you wish to.
15 Q. How long has Berman been here?
A. I don't know. I don't know how long he has been here.
Q. Did you know him in New York?
A. No, sir.
Q. Did you know Cuttler in New York?
A. No, sir; I don't know him now.
Q. Do you mean to say that Cuttler wasn't in that house at No. 153 the night we arrested you?
A. I don't know whether he was or not.
Q. Was Greenberg there at that time?
A. I don't know him at all.
Q. Did you ever communicate with Leah after you left Russia?
A. Very seldom, I wrote to my friends to ask her if she wanted to take a divorce and I got an answer she didn't care about it and I dropped it and didn't write any more.
Q. Did you ever write to her asking her to come out to this country?
A. No.
Q. Did you want her to come out here?
A. No.
Q. Then if you didn't want her to come out here, why did you go to Canada and bring her here?
A. I was afraid she would make me some trouble.
Q. Did you ever send her money towards her support?
A. No.

COYNE to Grossman: Mr. Grossman, you may question alien now, Mr. Grossman.

GROSSMAN to Lewis:

Q. What kind of work did you do when you were in Detroit?
A. Paper hanging and painting.
Q. For what people?
A. Mr. Freidman, he lives on Napoleon and Rivard, Mr. Simons, Cor. Hastings and Alfred; Mr. Knapel, Cor. Hastings and Windser; Mr. D. W. Simons, 328 Majestic Bldg.; Mr. Weingarten, 339 Monroe avenue; Schroeder, Cor. High and Hastings; at the Goldberg restaurant at High and Hastings.
Q. What did you do at Goldberg's?
A. Paper hanging.
Q. Where else?
A. For Mr. Weitsman and Mr. Schmire.
Q. Did you work for J. P. Rosenthal, on Gratiot avenue, Cor. Montcalm and Hastings?
A. Yes.
Q. Did you work for anybody else?
A. In a pool room at Cor. of High and Hastings, at Brascky's place.
Q. For who else?
A. Lester Café, Cor. Hastings and Montcalm.

16 Q. Well, you have been working for all these people around here?
A. Yes.
Q. And were you ever arrested in Detroit except this time?
A. No.
Q. Did you ever know that Leah was a shop-lifter?
A. No.
Q. And when you brought her over here at the time you came over with her, did you want her to do anything wrong?
A. No, sir.
Q. What did you want her to do?
A. To be a nice woman, stay in the house and tend to me when I came from work, like a husband.
Q. Well, are you her husband?
A. Yes.

GROSSMAN: That is all.

COYNE to alien: Did you ever take out your final papers?
A. No, sir.
Q. Never took out your second papers?
A. No, sir.

GROSSMAN to alien:

Q. How old were you when you came to the U. S. A.?
A. About 20 or 21.

COYNE to alien: Have you any personal effects in Detroit, except what is at 153 Napoleon street?
A. No.
Q. Got any money in the banks here?
A. No, sir.

Q. Have you told anyone here, since this case was started that what you have stated here since you came in with this Leah, has not been the truth?

A. No, sir; I told everybody that what I said was the truth. I told Mr. Frick that.

Q. Did you tell any one you wanted to change it?

A. No, sir; what should I change it for.

Q. Did you tell Mr. or Mrs. Newman that what you said was not the truth and that you wanted to change it?

A. No, sir.

GROSSMAN to alien:

Q. How often did you see Mr. Frick here?

A. He was here twice.

Q. Was he here today?

A. Yes.

Q. What did he say to you?

A. He said that I should tell the truth, when I was here in the examination.

Q. What else did he say? Did he say anything about you going free if you told the truth?

A. No, he said to me to say the truth.

17 Q. And you have told the truth here?

A. Yes, sir; I asked him the question, "suppose my wife says something different from what I say, would it be perjury?" and he said he wouldn't prosecute me for perjury.

COYNE to Grossman: Do you wish to introduce further testimony in this case?

A. No, sir; but I wish to introduce some testimony in the shape of deposition or affidavits.

COYNE: Counsel will be given opportunity to file a brief in this case.

Alien was notified of his right to be released from custody by furnishing bail bond in the sum of $5,000, of which right he expressed his inability to avail himself, wherefore he was placed in the custody of the sheriff of Wayne County, at the Wayne County Jail, Detroit, Mich., awaiting the decision of the Secretary in his case.

Exhibits.

A-1. Telegraphic warrant of arrest.
A-2. Department warrant of arrest.
A-3. Telegram raising bail from $1,000 to $5,000.
B—. Photopraph of alien in this case.
C—. Phila. letter dated Dec. 7, 1910.
D—. N. Y. Commissioner's letter dated Dec. 8, 1910.
E—. Statement made by alien on Nov. 21, 1910.
F—. Copy of this alien's declaration of intention to become a U. S. citz.

"EXHIBIT F."

Circuit Court of the United States for the Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Sam Lewis, of Brownsville, Brooklyn, N. Y., being duly sworn, deposes and says that he was born in Russia, in the year one thousand eight hundred and eighty-two and emigrated to the United States, landing at the port of New York in the State of New York, on or about the 25th day of September, A. D., 1904, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign Prince, Potentate, State or Sovereignty whatever, and particularly to the Emperor of Russia, of whom he is at this time a subject.

18 Sworn to before me this 16th day of May, 1906.

SAM LEWIS.

Clerk's Office, Office of the Circuit Court of the United States for the Southern District of New York.

I Hereby Certify, that the foregoing is a true copy of an Original Declaration of Intention on file and remaining of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said court this 28th day of Nov. 1910.

[SEAL.] (Sgd.) JOHN A. SHIELD, *Clerk.*

EXHIBIT B.

UNITED STATES OF AMERICA:

The District Court of the United States for the Eastern District of Michigan, Southern Division, of the November Term, A. D. 1910.

(Presented in Open Court and Filed December 9th, 1910.)

EASTERN DISTRICT OF MICHIGAN,
Southern Division, ss:

The Grand Jurors of the United States of America, empaneled and sworn to inquire in and for the body of the Southern Division of the Eastern District of Michigan, upon their oaths present: That heretofore, to wit: on the seventeenth day of November, in the year of Our Lord one thousand nine hundred and ten, at the City of Detroit, in the County of Wayne, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this honorable Court, one Samuel Lewis, alias Sam Przysuskier, alias Sam Nossek, late of the City of Detroit aforesaid, did unlawfully,

wilfully and knowingly import and bring into the United States, at Detroit aforesaid, from a foreign country, to wit: the Dominion of Canada, for an immoral purpose, to wit: for illicit concubinage and cohabitation, an alien woman, to wit: one Lena Ochberg, alias Lena Lewis, alias Lije Stawskowski, who was then and there a citizen of Russia and a subject of the Emperor of Russia: Contrary to the Form, force and effect of the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

____ ____,
United States Attorney, Eastern District of Michigan.

____ ____,
Ass't U. S. Attorney, Eastern District of Michigan.

19 Sec. 3, Mar. 26, '10.

STATE OF MICHIGAN,
County of Wayne, ss:

Guy W. Moore of Detroit, Wayne County, Michigan, being first duly sworn says: that he has, as attorney for Samuel Lewis whose Petition for Writ of Habeas Corpus is hereto attached, demanded copies of the following warrants,

'Warrant of Arrest'
'Warrant of Deportation' &
'Warrant of Commitment to Wayne County Jail'

from G. Oliver Frick, United States Immigrant Inspector, In Charge, in the matter of the Deportation of said Samuel Lewis, and same were refused.

Affiant further says that copies of said warrants as aforesaid were demanded of the said G. Oliver Frick that same might be attached as Exhibits, and be made a part of the petition of the said Samuel Lewis for the Writ of Habeas Corpus as aforesaid.

GUY W. MOORE.

Subscribed and sworn to before me, This 4th Day of April A. D. 1911.

CHAS. THUMAN,
Notary Public, Wayne County, Michigan.

My Commission expires Sept. 29, 1914.

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

Writ of Habeas Corpus.

(Filed April 15, 1911.)

The President of the United States to the United States Immigrant Inspector in Charge, G. Oliver Frick, Greeting:

We command that you have the body of Samuel Lewis, by you imprisoned and detained, as it is said, together with the time and

cause of such imprisonment and detention, by whatsoever name the said Samuel Lewis shall be called or charged, before the Honorable Arthur C. Denison, United States District Judge, sitting in said District by designation, at the United States District Court Room in the City of Detroit, in said District, on the 14th day of April, A. D., 1911, at ten o'clock A. M., to do and receive what shall then and there be considered concerning the said Samuel Lewis, and have you then and there this writ.

20 Witness, the Honorable Edward D. White, Chief Justice of the United States, and the Seal of said court, this Thirteenth day of April in the year of our Lord one thousand nine hundred and eleven.

[SEAL.] MARTIN J. CAVANAUGH, *Clerk.*
By ELMER W. VOORHEIS,
Deputy Clerk.

EASTERN DISTRICT OF MICHIGAN, *ss.:*

I hereby certify and return that upon the 13th day of April, A. D., 1911, I served the within writ on the within named G. Oliver Frick, United States Immigration Inspector in Charge, at his office in the City of Detroit, in said District, by delivering to him personally, a Certified Copy thereof.

FREDERIC FLORIAN,
Especially Deputized to Serve the Within Writ.

I hereby certify that the within Writ of Habeas Corpus was duly allowed by me on the 13th day of April, A. D. 1911.

ARTHUR C. DENISON,
United States District Judge Sitting by Designation.

Returned served, filed and entered Apr. 15, 1911.

MARTIN J. CAVANAUGH, *Clerk.*

Frederic Florian is hereby specially deputized to serve the within writ.

Apr. 13, 1911.

ARTHUR C. DENISON,
District Judge by Designation.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

In the Matter of the Petition of SAMUEL LEWIS for Writ of Habeas Corpus.

Answer to Petition for Writ of Habeas Corpus.

(Filed April 14, 1911.)

Now comes C. Oliver Frick, respondent in compliance with the citation heretofore served upon him, requiring him to appear and answer the petition of said Samuel Lewis for a writ of habeas corpus,—for answer says:

21 That said Samuel Lewis was on the 24th day of November A. D., 1910, placed under arrest by virtue of a warrant from the Department of Commerce and Labor: that said Samuel Lewis had a full and complete hearing upon said warrant for apprehension, and on the 14th day of February A. D., 1911, the Secretary of Commerce and Lebor made a finding upon the evidence taken in said cause then pending before said Secretary of Commerce and Labor and adjudged that said alien is a member of the excluded classes in that he has been convicted of and admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry to the United States; that he procured, imported and brought into the United States a woman for an immoral purpose; that at the time of his entry into the United States he was a person likely to become a public charge; and that he is unlawfully within the United States in that he secured admission by false and misleading statements, thereby entering without the inspection contemplated by law, and issued an order thereon that he, the said Samuel Lewis be deported to the Country from whence he came, to-wit: Russia, and that by virtue of said warrant this respondent holds said Samuel Lewis for the purpose of deportation and further says that the matters and things determined by said Secretary of Commerce and Labor is exclusively within the jurisdiction of said Secretary of Commerce and Labor and are not within the jurisdiction of this Court.

Respondent further says that since the trial of the case in this Court, of the United States against Samuel Lewis, said Samuel Lewis obtained a stay of the execution of said warrant of deportation and submitted such additional evidence to the Secretary of Commerce and Labor as he saw fit, and on the 13th day of April A. D., 1911, the Secretary of Commerce and Labor directed this respondent to, immediately execute said warrant of deportation, therefore this respondent asks that this writ be not granted.

G. OLIVER FRICK,
Inspector in Charge Immigration.

On this 14th day of April A. D., 1911, personally appeared before me, G. Oliver Frick, and made oath that he has heard read the above answer subscribed by him and knows the contents thereof, and that the same is true except the matters therein stated on information and belief and as to those matters he believes it to be true.

[SEAL.] ELMER W. VOORHEIS,
Notary Public, Wayne Co., Mich.

Commission expires April 1, 1914.

22 In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

No. 243.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, Immigration Inspector, Respondent.

Memorandum of Hearing.

(Filed April 21, 1911.)

April 14, 1911.—Respondent appeared in person, and by F. H. Watson, District Attorney, petitioner with him. Florian, Moore & Wilson counsel for petitioner.

Mr. Frick's answer filed. He produced also, for inspection by the court, his complete copy in the matter, being:

1. Copy of warrant of arrest.
2. Copy warrant of deportation.
3. Copy letter 2-28 from Commissioner at Montreal.
4. Copy telegram 3-23 Frick to Montreal.
5. Copy letter 3-24 Montreal to Frick.
6. Copy telegram 3-24 Montreal to Frick.
7. Copy telegram Secretary to Frick, 4-13.

Thereupon in response to questions from me, Mr. Frick made the various statements and concessions referred to in the opinion this day filed, and it was agreed that, without any formal hearing, the facts might be considered as therein recited.

April 20th, 1911.

ARTHUR C. DENISON,
District Judge, Sitting by Designation.

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

LEWIS, Petitioner,
vs.
FRICK, Immigration Inspector, Respondent.

Opinion.

The petitioner, Samuel Lewis, came from Russia, to this
23 country, entering at the port of New York, and regularly passing inspection, on September 20th, 1904. He lived in, or in the vicinity of New York, until March, 1910, when he came to Detroit, where he has since made his home, and worked as a painter and paper hanger, and it is undisputed that he was industrious and orderly and in no trouble until November 17th, 1910. On that day, he went across the river, from Detroit to Windsor, remained not more than an hour or so, and brought back with him, into the United States, a woman claimed to be his wife. On this occasion, he made to the immigration officers a statement as to the woman and her recent history, some part of which statement was concededly untrue. In December following, he was indicted by the grand jury for violation of §3 of the immigration law, as amended March 26th, 1910, the sole charge being that in bringing this woman across the river on November 17th, she was, by him, imported for an immoral purpose. This indictment duly came on to be tried in the District Court of this district, and on March 23rd, 1911, the trial jury rendered a verdict of not guilty.

On November 24th, 1910, he was arrested by an immigrant inspector upon a warrant of arrest issued by the Department of Commerce and Labor and specifying as its moving causes: (1) that he had been convicted of or admitted having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entering the United States; (2) that he had brought into the United States a woman for immoral purposes; (3) that at the time of his entry (November 17th, 1910), he was likely to become a public charge; and (4) that he entered without inspection and, hence, was unlawfully in the country. Certain hearings and examinations were held before the inspectors. Complaint is made concerning some features of these examinations, and it is said that he did not have a fair hearing or such hearing as the law requires. So far as concerns the main question of fact into which the Department undertook to examine, viz., the importing of the woman, I do not see sufficient ground for these complaints, and if the Department had jurisdiction, under the existing circumstances, to hear and determine this question of fact and to deport upon that ground, I should not undertake to review its conclusion.

What I understand to be a complete file copy of the Department proceedings does not show any formal finding by the Department
upon the charges made, but that is, probably, not material,
24 because, on February 14th, 1911, the Secretary of Commerce and Labor issued his warrant of deportation, reciting that,

after due hearing, he had become satisfied that Lewis, who landed at Detroit, Michigan, from Canada, November 17th, 1910, was in this country in violation of the immigration law as amended March 26th, 1910, in this, to-wit:

"That the said alien was a member of the excluded classes in that he has been convicted of and admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the U. S.; that he procured, imported and brought into the U. S., a woman for an immoral purpose; that at the time of his entry into the U. S., he was a person likely to become a public charge; and that he is unlawfully within the U. S. in that he secured admission by false and misleading statements thereby entering without the inspection contemplated by law; and may be deported in accordance therewith."

Thereupon, the warrant directed that he be taken to New York and be from there deported to Russia.

February 28th, the Department directed that his deportation be stayed until he was released by the court authorities in connection with the pending indictment. March 23rd, Mr. Frick was authorized to stay deportation for ten days further to enable Lewis to submit additional information. Lewis, by his attorneys, submitted to the Department, at Washington, a showing that he had been acquitted on the indictment and also some character evidence. April 13th, and it is to be assumed after this additional showing, the Secretary withdrew the stay and directed Mr. Frick to execute the warrant immediately.

Thereupon, a writ of habeas corpus was allowed from the court Mr. Frick, appearing in person and by the United States District Attorney, makes return. The foregoing facts and others to be hereafter mentioned, appear without dispute either from the petition and return or from the statements made by Mr. Frick and the District Attorney in open court upon the hearing.

The immigration inspector insists that this court is without jurisdiction to make the inquiry which will be necessary in order to release the petitioner from custody, while the petitioner insists that the Department was without jurisdiction to issue the warrant.

It is entirely clear that when the petitioner, in such case, is an alien, and when the right to deport him depends upon a question of fact and when there has been a hearing by the Department
25 of that question, such hearing being upon disputed evidence, and the conclusion of the Secretary is based upon some evidence, such conclusion cannot be reviewed by the courts, and if the fact so found does, in law, justify the deportation, it must proceed, however, mistaken the conclusion of the Department may seem to the court to have been. On the other hand, it is equally clear that errors of law, by the Department, may be reviewed by the courts; that an erroneous conclusion of law, made by the Department, cannot be sustained by being mistakenly called a conclusion of fact; that a conclusion of fact based upon no evidence tending to support it is of no force, and the hearing at which no evidence is introduced

is no hearing; and that the secretary's authority for deportation must be found in the statute. (See cases cited in Note 1.)

Except as to the charge as to the woman, all the charges depend upon the theory that Lewis' entry into the United States was on November 17th, 1910. I think this is a wholly mistaken theory, on the undisputed facts. There has been a great diversity of holding under varying circumstances as to the effect of a temporary return to his native country by an alien who had established a domicile in this country. Sometimes it is quite clear that the return therefrom to this country must be considered a new entry, and sometimes whether a new entry might be a question of fact; but I find no case supporting the theory that where an alien has an est-blished residence and occupation in this country which has extended, as in this case, for six years, and where he crosses the border, not into his native country but into another foreign country, and so crosses for a mere temporary purpose, and returns within an hour, particularly at a point like the Detroit-Windsor crossing where hundreds are crossing and recrossing every day,—I find no support for the theory that the return in such case can be considered as the entry to which the immigration laws relate. (See cases cited in Note 2.)

It is conceded that the charge relating to having been convicted of or admitting a felony or other crime or misdemeanor, has no basis whatever, excepting that two or three years before coming to Detroit and after he had been two or three years in this country, Lewis was arrested by the New York police on the charge of house-breaking, that this charge was withdrawn and a charge of disorderly conduct placed against him, and that to this he pleaded guilty (or perhaps was convicted) and paid a fine of ten
26 dollars. It is further said that at about the same time and in Atlantic City, Lewis was convicted as a disorderly person and paid a small fine. It does not appear, however, that this Atlantic City charge was ever brought to Lewis' attention in the Department proceedings. As to the New York City charge, Lewis insisted from the beginning that he was guilty of nothing and did not know what he was arrested for and paid a fine because he was ordered to. In this matter, the Department may suspect that Lewis was guilty of house-breaking or that he was consorting with thieves and burglars, but he has neither admitted nor been convicted of any such thing. Certainly, there is no basis for the idea that disorderly conduct, fined ten dollars, is a "crime or misdemeanor involving moral turpitude;" any more than is the case of carrying concealed weapons, considered by Circuit Judge Ward in ex parte Saraceno, 182 Fed. Rep., 955. Jurisdiction to deport cannot rest on this charge; and this without regard to the date of the offense, which was long after Lewis' actual entry into the United States. The latter consideration alone would end the question.

As to the accusation that at the time of his entry he was likely to become a public charge, it is to be noted, first, that this has to do with his actual entry in 1904, as to which no claim is made and no proof taken; second, that at the time of the Windsor-Detroit crossing, he was able-bodied, industrious and self-supporting and

nobody has suggested the contrary; and, third, that the proposition advanced by the Department as the only one upon which this claim was ever thought to rest is that inasmuch as he was bringing in a woman contrary to law, he was likely to be arrested and convicted and imprisoned and so become a public charge. It therefore appears that this element of his offense is collateral to the other or importing charge and must stand or fall therewith, even if it could otherwise have force.

The final ground recited is that he procured admission by false and misleading statements. It is conceded by the inspector that this relates wholly to the Windsor-Detroit admission of November, 1910, and on this subject, it is to be observed first that this was not the time of his admission to the country; second, that his alleged false and misleading statements related wholly to the woman and had nothing to do with himself or his right to admission; and, third, that if their falsity had been discovered when made, he would, nevertheless, have had a perfect right to return to his domicile in Detroit. This ground of deportation, obviously, can not
27 stand on its own merits and is collateral to the charge of importation.

This leaves for consideration only the last named charge, viz., that relating to the woman. The jury found Lewis not guilty. From my familiarity with the evidence, I can say I think the evidence, as fully developed on the trial, (it being, in a substantial way, the same as the evidence before the Department), justified a strong suspicion that Lewis was guilty, but did not justify a conviction under the rules of criminal law. The case is one where the courts could not review the conclusion of the Department, if the Department has jurisdiction to hear such question at all. However, I am unable to find in the immigration law any authority whatever for deporting an alien because he has imported a woman for immoral purposes. Such importation might be fully proved, or, indeed, might be admitted by the alien, and still the Department would have no jurisdiction to deport. It has such jurisdiction only under § 3, and that exists only in case of conviction.

I am led to this conclusion by study and comparison of Sections 2 and 3. Section 2 excludes from admission into the country a person who attempts to bring in a woman for immoral purposes. In terms, it applies only to excluding one who is attempting to get in, but it has been construed to be effective, by relation, in deporting those who had entered; and I accept that construction. Whether it could, in any event and standing by itself, be a basis for deporting an alien who had established and maintained a domicile in this country for six years, and in a case where the offense had nothing to do with the entry of the person to be deported, it is not necessary in this case to decide.

By § 3, Congress has provided that where the woman imported is an alien and the person importing is an alien, a felony is committed; and that the person who is convicted of this felony may be deported. Under the general rules of statutory construction (Noyes, C. J., in Wong Tun vs. U. S., 181 Fed., 313), the intent seems clear that

out of the general class covered by § 2, Congress has selected a particular class named in § 3 and submitted it to a severe punishment, but, in connection therewith, has limited the right to deport to cases where there is a conviction.

The right to prosecute criminally and the right to deport are inconsistent, as concurrent rights; they cannot both be exercised at the same time; Congress saw the necessity of making the proceedings successive; and it clearly, and probably purposely, made the
28 second step depend on the result of the first step.

The conclusion is inevitable that the deportation warrant is void and that the petitioner should be discharged. An order may be entered accordingly; but the discharge may be stayed for a further period of ten days to enable the District Attorney to perfect an appeal, if desired.

Dated April 20, 1911.

ARTHUR C. DENISON,
United States District Judge,
Sitting by Designation.

Notes.

The following notes cover all pertinent cases found in the Fed. Rep. since Vol. 150. Chinese cases are (generally) not included, because they are sui generis (C. C. A.-3, Rodgers vs. U. S., 152 Fed. 346). All relevant Supreme Court cases are reviewed in the citations:

NOTE. 1.—The jurisdiction of the Federal courts on Habeas Corpus, in cases where the Department of Commerce and Labor has ordered deportation.

A.—Instances Where Jurisdiction Discussed and Sustained.

(1) U. S. vs. Nakishima, 160 Fed., 842. (C. C. A.-9.)

(2) U. S. vs. Watchom, 160 Fed., 1014 (Ward, C. J.).

(3) Ex parte Petterson, 166 Fed., 539 (Purdy, D. J.).

(4) U. S. vs. Williams, 173 Fed., 626 (Hand, D. J.). Because determined by a question of law.

(5) Botis vs. Davies, 173 Fed., 996 (Sanborn, D. J.). See comments on attempt of Department to stand on inapplicable laws (pp. 1001, 1002).

(6) Ex parte Koerner, 176 Fed., 448 (Whitson, D. J.). Question of law involved. Cases reviewed.

(7) Ex parte Sibray, 178 Fed., 144 (Orr, D. J.). Discussion on p. 150.

(8) Davis vs. Manolis, 179 Fed., 818 (C. C. A., 7). Controlling question held to be one of law.

(9) Sprung vs. Morton, 182 Fed., 339 (Waddill, D. J.). Cases reviewed on pp. 333, 335, 339.

B.—Instances Where Jurisdiction Denied.

(1) U. S. vs. Watchorn (re Funaro), 164 Fed., 152 (Ward, C. J.). This decision seems not to consider the point that the secretary had no jurisdiction unless an "admission" was involved. In

so far as it seems to hold the secretary's decision final on a question of law, see Ex parte Saracno and In re Nicola, infra.

29 (2) Ex parte Crawford, 165 Fed., 830 (Adams, D. J.).

(3) Re Tang Tun, 168 Fed., 485 (C. C. A., 9).

(4) U. S. vs. Williams, 175 Fed., 275 (Hand, D. J.).

(5) Edsell vs. Mak, 179 Fed., 292 (C. C. A., 9).

(6) De Bruler vs. Gallo, 184 Fed., 566 (C. C. A., 9).

In all of these cases there was involved what was thought to be an "admission," so giving effect to the finality section, and the controlling question was thought to be one of fact.

C.—Conclusion.

That inferences of law from undisputed facts are to be finally drawn by the courts and not by the Department is clearly shown by the two latest cases from the Second Circuit:

(1) Ex parte Saracno, 182 Fed., 955 (Ward, C. J.). Holding that there is no authority to deport unless the person is a member of one of the statutory classes; and that the decision of the Department is not binding if not based on any evidence. "It is impossible to avoid the conclusion that the real ground for the order is that the immigration authorities think the alien is an undesirable citizen, which is a class not excluded by the immigration law."

(2) In re Nicola, 184 Fed., 322 (C. C. A., 2). The question of citizenship, as one of law on undisputed facts, was considered, and the order of the immigration officer reversed.

NOTE 2.—The Case of An Alien who has a Domicile in the United States, but returns to his Native County, and whose re-entry into the United States is challenged.

A.—Instances Where Admitted:

(1) Rodgers vs. U. S., 152 Fed., 346 (C. C. A., 3). Had resided in U. S. four years, returned to native country four months. Act of 1903 is considered, but upon reasons applicable to Act of 1907.

(2) U. S. vs. Nakishima, 160 Fed., 842 (C. C. A., 9). After two years' residence in U. S., had been in native country two years.

(3) Sprung vs. Morton, 182 Fed., 330 (Waddill, D. J.). Nine month- in native country after several years in U. S. See p. 337 for review of cases.

B.—Instances of Exclusion:

(1) Taylor vs. U. S., 152 Fed., 1 (C. C. A., 2). This case discusses whether the statute covers an alien who is not also an immigrant. It was by a divided court, has been doubted by the 9th C. C. A. (160 Fed., 842), and reversed (on another point) by the Supreme Court (207 U. S., 120).

(2) Re Fonaro, 164 Fed., 152 (Ward, C. J.). In native
30 country for five months, after being in U. S. six years.

(3) Ex parte Crawford, 165 Fed., 830 (Adams, D. J.). Circumstances not stated.

(4) U. S. vs. Hook, 166 Fed., 1007 (Morris, D. J.). A return to native country for four days only.

(5) Ex parte Peterson, 166 Fed., 536 (Purdy, D. J.). Nine months in native country, after five years in U. S.

(6) Loe Shee vs. North, 170 Fed., 566 (C. C. A., 9). This

case holds that the admission continues inchoate until the end of the specified probationary period; it does not relate to a domicile once perfected.

(7) U. S. vs. Villt, 173 Fed., 500 (Holt, D. J.). The result reached depended on the peculiar consideration stated.

(8) Ex parte Hoffman, 179 Fed., 832 (C. C. A., 2). A return to Russia for three months after three years in U. S.

C.—Conclusion:

The rule seems fairly settled in the Second Circuit that the second entry is to be treated as a new original; and in the third and ninth to the contrary. Judge Tayler's opinion in U. S. vs. Aultman, 143 U. S., 922, affirmed in 148 Fed., 1022, indicates that the latter view is the law of this circuit. It concerns a contract laborer, and an older law, but I see no distinction in principle.

It is to be noted also that Lewis is ordered deported to Russia, and his entry from Russia was in 1904. If his crossing of November, 1910, was the unlawful admission, he should have been deported to Canada.

Order.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the district court room in the City of Detroit, in said district, on Friday the twenty-first day of April in the year of our Lord one thousand nine hundred and eleven.

Present: The Honorable Arthur C. Denison, District Judge sitting by designation.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, Immigration Inspector in Charge, Respondent.

The above petition having heretofore, on the 14th day of
31 April, A. D. 1911, come on to be heard upon the petition and return of the respondent, and the statements and arguments of the parties or their attorneys specified in the memorandum of hearing filed herein, and having been duly submitted to and considered by the court, and the court being of the opinion that the warrant of deportation issued against the petitioner is void for the reasons stated in the opinion filed;

Ordered, that the petitioner be and is hereby discharged from the custody of the respondent;

Further ordered, that such discharge be stayed and the petitioner continue in the custody of the respondent for ten (10) days, within which time respondent may determine whether to appeal, and that in case appeal is taken that petitioner be admitted to bail pending appeal, pursuant to Rule 34, by bond in the sum of Five Hundred Dollars ($500.00) with surety and in form to be approved by this court.

Order.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District, on Monday the 1st day of May, in the year of our Lord one thousand nine hundred and eleven.

Present: The Honorable Henry H. Swan, District Judge.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, Immigration Inspector in Charge, Respondent.

The order heretofore made and entered in this cause on the 21st day of April, A. D. 1911, is hereby continued in force and effect for ten (10) days additional time within which appeal may be taken and bond of petitioner filed.

32 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, United States Immigration Inspector in Charge.

Assignment of Errors.

Now comes the above named plaintiff in error, G. Oliver Frick, United States Immigration Inspector in charge, the respondent in the above entitled cause, by Frank H. Watson, United States Attorney, and J. Edward Bland, Assistant U. S. Attorney for the Eastern District of Michigan, as counsel and says that in the records and proceedings in the above entitled cause, there is manifest error in this, to-wit:

1. The court erred in sustaining the petition of said Samuel Lewis for a writ of habeas corpus.

2. The court erred in ordering petitioner, Samuel Lewis discharged from custody.

3. The court erred in holding that said court had jurisdiction to hear and determine the matters and things set forth in said petitioner's petition.

4. The court erred in holding that the Secretary of Commerce and Labor was without jurisdiction to issue his warrant of deportation for the said Samuel Lewis.

5. The court erred in holding that the warrant of deportation issued by the Secretary of Commerce and Labor was void.

6. The court erred in holding that petitioner's entry into the

country, was on the 20th of September, A. D. 1904, and that by his leaving the country for Windsor, Canada, and staying for a brief period on the 17th day of November, A. D. 1910, that his return did not constitute an entry within the meaning of section two of the amendment to the Immigration laws passed and approved March 26th, 1910.

7. The court erred in holding that by section three of said Act, it is necessary before an alien can be deported because of his importing alien women for illegal purposes, that it is necessary that he be first convicted of the criminal offense as provided for in Section three.

33 8. The court erred in holding that Congress has limited the right to deport to cases where a conviction has been had, and for other purposes appearing on the record.

Whereas, by the law of the land the said writ of habeas corpus should have been denied, and appellant prays that the order and judgment may be annulled and held for naught and for such other relief as may seem proper in the premises.

May 5, 1911.

FRANK H. WATSON,
United States Attorney,
Attorney for Respondent.
J. EDWARD BLAND,
Assistant U. S. Attorney, Eastern District of Michigan, Attorney for Respondent.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, United States Immigration Inspector in Charge.

Petition.

To Hon. Arthur C. Denison, District Judge, sitting by designation in said Circuit:

G. Oliver Frick, United States Immigration Inspector in Charge, respondent to the petition of Samuel Lewis for writ of habeas corpus, by Frank H. Watson, United States Attorney and J. Edward Bland, Assistant United States Attorney, his attorneys, feeling himself aggrieved by the order and judgment entered by said Judge on the 21st day of April, A. D. 1911, in the above entitled proceedings does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Sixth Circuit, and prays that his appeal be allowed and that a transcript of the proceedings, records and papers upon which said order is made, duly authenticated,

may be sent to the Circuit Court of Appeals for the Sixth Judicial Circuit.

May 5, 1911.

34 FRANK H. WATSON,
United States Attorney, Attorney
For Above-named Respondent.
J. EDWARD BLAND,
Assistant U. S. Attorney, Attorney
For Above-named Respondent.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, United States Immigration Inspector in Charge.

Order.

On reading the petition of said G. Oliver Frick, the respondent in the above proceedings, filed by his attorneys herein together with the assignment of errors accompanying the same, it is ordered that said appeal be allowed as prayed for by said respondents in said petition for appeal.

May 8, 1911.

ARTHUR C. DENISON,
U. S. District Judge, Sitting by Designation.

Order.

At a session of the Circuit Court of the United States for the Eastern District of Michigan continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said District, on Wednesday the Twenty-eighth day of June, in the year of our Lord one thousand nine hundred and eleven.

Present: Honorable Arthur C. Denison, District Judge Sitting by Designation.

UNITED STATES OF AMERICA
vs.
SAMUEL LEWIS.

In this cause upon the application of Frank H. Watson, United States Attorney, it is by the court now here ordered that the
35 time to make return to writ of error herein be and the same is hereby extended until July 10th, 1911, and that such extension be and the same is hereby entered nunc pro tunc as of the 7th day of June, 1911, and it is further ordered that if on the 11th day of July, 1911, the return has not been made, thereafter the bond

given by respondent Samuel Lewis shall stand as cancelled and discharged without further order.

36 And afterwards towit on January 9, 1912 an entry was made upon the Journal of said Court in said cause which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

2200.

G. OLIVER FRICK, U. S. Immigration Inspector, etc.,
vs.
SAMUEL LEWIS.

Before Warrington, and Knappen, C. JJ. and Killits, D. J.

This cause is argued in part by Mr. J. Edward Bland for the Appellant and is continued until tomorrow for further argument.

And afterwards towit on January 10, 1912 an entry was made upon the Journal of said Court in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

2200.

G. OLIVER FRICK, U. S. Immigration Inspector, etc.,
vs.
SAMUEL LEWIS.

37 This cause is further argued by Mr. J. Edward Bland for the Appellant and by Mr. H. P. Wilson and Mr. Guy W. Moore for the Appellee and is submitted to the Court.

And afterwards towit on February 13, 1912, a decree was entered in said cause which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

2200.

G. OLIVER FRICK, United States Immigration Inspector,
vs.
SAMUEL LEWIS.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Michigan and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be and the same is hereby reversed and the appellee is remanded to the custody of the appellant.

38 And on the same day, towit February 13, 1912, an opinion was filed in said cause which reads and is as follows:

Opinion.

39 United States Circuit Court of Appeals, Sixth Circuit.

No. 2200.

Filed Feb. 13, 1912. Frank O. Loveland, Clerk.

G. OLIVER FRICK, United States Immigration Inspector in Charge, Appellant,
v.
SAMUEL LEWIS, Appellee.

Appeal from the United States Circuit Court for the Eastern District of Michigan, Southern Division.

Submitted January 10, 1912; Decided February 13, 1912.

Before Warrington and Knappen, Circuit Judges, and Killits, District Judge.

This appeal is from a judgment in habeas corpus holding a warrant for deportation to be void. It was agreed in the court below that the facts of the case might be considered as they are stated in the opinion. The opinion shows (189 Fed. 146) that on November 17, 1910, Lewis

"went across the river, from Detroit to Windsor, remained not more than an hour or so, and brought back with him, into the United States, a woman claimed to be his wife. On this occasion, he made to the immigration officers a statement as to the woman and her recent history, some part of which statement was concededly untrue. In December following he was indicted by the grand jury for violation of Section 3 of the immigration law * * * the sole charge being that, in bringing this woman across the river on November 17th, she was, by him, imported for an immoral purpose. This indictment duly came on to be tried in the District Court of this district, and on March 23, 1911, the trial jury rendered a verdict of not guilty. The issue was whether the woman was in fact, or was believed to be, his lawful wife.

40 "On November 24, 1910, he was arrested by an immigrant inspector upon a warrant of arrest issued by the Department of Commerce and Labor, specifying, as its moving causes: (1) that he had been convicted of or admitted having committed a felony or other crime or misdemeanor involving moral turpitude prior to

his entering the United States; (2) that he had brought into the United States a woman for immoral purposes; (3) that at the time of his entry (November 17, 1910), he was likely to become a public charge; and (4) that he entered without inspection, and hence was unlawfully in the country. Certain hearings and examinations were held before the inspectors. * * *

"What I understand to be a complete file copy of the Department proceedings does not show any formal finding by the Department upon the charges made, but that is, probably, not material, because on February 14, 1911, the Secretary of Commerce and Labor issued his warrant of deportation, reciting that, after due hearing, he had become satisfied that Lewis, who landed at Detroit, Michigan, from Canada, November 17, 1910, was in this country in violation of the immigration law as amended March 26, 1910, in this, to-wit:

" 'That the said alien was a member of the excluded classes in that he has been convicted of and admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he procured, imported and brought into the United States a woman for an immoral purpose; that at the time of his entry into the United States, he was a person likely to become a public charge; and that he is unlawfully within the United States in that he secured admission by false and misleading statements thereby entering without the inspection contemplated by law; and may be deported in accordance therewith.'

"Thereupon, the warrant directed that he be taken to New York and be from there deported to Russia."

After alluding to a stay directed by the Department pending proceedings under the indictment and also to a further stay for ten days to enable Lewis "to submit additional information" the trial judge said:

"Lewis, by his attorney, submitted to the Department, at Washington, a showing that he had been acquitted on the indictment, and also some character evidence, April 13th, and, it is to be assumed after this additional showing, the Secretary withdrew the stay and directed Mr. Frick (the inspector) to execute the warrant immediately."

41 WARRINGTON, *Circuit Judge* (after stating the facts as above).

The right of deportation was denied on the ground that the Department was without jurisdiction. The controlling reasons for so holding were: (1) that all the charges except the one concerning the woman depended upon the charge that Lewis' entrance into the United States was on November 17, 1910, while the court was of opinion that since his first entrance occurred September 20, 1904, the three years' clause of the Act of Congress began to run at that time and so the period for deportation had expired at the date of the Detroit entrance; (2) that as the act of importing and bringing into the United States a woman for immoral purposes is denounced by the act as a felony, Lewis must be convicted of the felony before he can be deported on that charge.

The court believed that there was no evidence tending to support any of the charges, except the one concerning the woman. Where there is nothing to support a charge, we agree that the Department can not rightfully issue a warrant to deport; for that would be a clear abuse of power. But, where a fair though summary hearing has been given, in ascertaining whether there is or is not any proof tending to sustain a charge involved in a case like this, it is not open to courts to consider either admissibility or weight of proof according to the ordinary rules of evidence (Lee Lung v. Patterson, 186 U. S. 176)—even if it believe the proof was insufficient and the conclusion wrong. The question is whether anything was offered that tends, though slightly, to sustain the charge. United States v. Ju Toy, 198 U. S. 253. As Mr. Justice Holmes said in Chin Yow v. United States, 208 U. S. 13:

"But unless and until it is proved to the satisfaction of the judge that a hearing properly so called was denied, the merits of the case are not open, and, we may add, the denial of a hearing can not be established by proving that the decision was wrong."

It is true that in both of the cases last cited the court was dealing with a question of exclusion of an alien, where by the act in question the decision of the executive officer was made final, but we think the rules there laid down, as well as those in Lee Lung v. Patter-
42 son, supra, are in principle applicable here. (Sec. 25, Act Feb. 20, 1907, 34 Stat. 907; 33 Id. p. 591). We are confirmed in this view by the decision in Bates & Guild Co. v. Payne, 194 U. S. 106, where an order of the Postmaster General was under review on appeal in an equity case and not in a habeas corpus proceeding. Justice Brown said (109):

"The rule upon this subject may be summarized as follows: That where a decision of questions of fact is committed by Congress to the judgment and discretion of the head of a department, his decision thereon is conclusive; and that even upon mixed questions of law and fact, or of law alone, his action will carry with it a strong presumption of correctness, and the courts will not ordinarily review it, although they may have the power, and will occasionally exercise the right of so doing."

When we consider the complicated duties devolved upon the Department and the objects sought to be accomplished by their proper discharge, viz., the ascertainment of conditions requiring particular aliens to be deported, we are convinced that it is not open to us to examine, according to technical tests, into the sufficiency of matters regarded by the Secretary of Commerce as proof. Thus interpreting the record, we cannot say that it contains nothing tending to support any of the charges other than the one concerning the woman; and of the latter the court said:

"So far as concerns the main question of fact into which the Department undertook to examine, viz., the importing of the woman, I do not see sufficient ground for these complaints, and if the Department had jurisdiction, under the existing circumstances, to hear

and determine this question of fact and to deport upon that ground, I should not undertake to review its conclusion."

We may now consider the grounds stated, upon which the learned trial judge allowed the writ. Section 2 of the act as amended March 26, 1910 (36 U. S. Stat. L. 263-4), defines certain classes of aliens, who "shall be excluded from admission into the United States." Among these classes are (1) persons likely to become a public charge; (2) persons who have been convicted of, or who admit having committed, a felony or other crime or misdemeanor in-
43 volving moral turpitude (prior, of course, to entry into the United States); (3) "persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose." Section 21 of the act (34 Stat. L. 905) vests power in the Secretary of Commerce and Labor to deport an alien who has been found here "in violation of this act * * * within the period of three years after landing or entry," and return him "to the country whence he came." Section 3 as amended March 26, 1910, provides that "whoever shall, directly or indirectly, import * * * into the United States, any alien for the purpose of prostitution or for any other immoral purpose" is guilty of a felony.

Was the period of three years, mentioned in Section 21, applicable in this case to Lewis' entry into Detroit, or only to his original entry into New York? It must be conceded that there is a diversity of judicial opinions upon the subject of temporary absence of an alien from this country and his re-entry. The difficulty, of course, arises through varying interpretations of acts of Congress; for the question is one of legislative intent. The power of Congress to prohibit a second or later entrance of aliens and the power originally to exclude them, are derived from the same source, and are but "parts of one and the same power." Fong Yue Ting v. United States, 149 U. S. 713. Illustrations of the exercise of the power to prevent and to permit re-entry may be found in the Chinese Exclusion case, 130 U. S. 603-4, and Lau Ow Bew v. United States, 144 U. S. 47; the first being based upon an act disclosing an intent to forbid return and the other upon an act showing a purpose to permit return.

One contention is that Lewis had been a domiciled resident here for more than three years prior to his entrance into Detroit, and that this entitled him temporarily to leave the country and re-enter without regard to the provisions defining the excluded classes. True, he had in May, 1906, declared his intention to become a citizen of the United States; but he was still an alien at the time of his re-entry. City of Minneapolis v. Reum, 56 Fed. 556 (C. C. A. 8th Cir.); In re Kleibs, 128 Fed. 656; In re Moses, 83 Fed. 995; Maloy v. Duden, 25 Fed. 673; Wallenborg v. Missouri Pac. Ry. Co., 159 Fed. 217, and In re Polson, ibid., 283.

44 In Lem Moon Sing v. United States, 158 U. S. 538, when speaking of the re-entry of a domiciled alien, Justice Harlan said (547):

"Is a statute passed in execution of that power (to exclude aliens)

any less applicable to an alien, who has acquired a commercial domicile within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to re-enter it? We think not. The words of the statute are broad and include 'every case' of an alien, at least every Chinese alien, who, at the time of its passage, is out of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicile in this country."

It is true that the decision was limited to the question whether appellant had been constitutionally committed to officers of the executive department for final determination (550), but the judgment below denying an application for a writ of habeas corpus was affirmed; and we regard the decision as applicable alike to the questions respecting domicile, and legislative intent touching the present use of the word "alien."

Now as to the Windsor-Detroit entry, it is safe to say that according to the present trend of decision of the Federal Courts of Appeals the entry was within the purview of Section two of the amended act. See Ex parte Hoffman, 179 Fed. 839 (C. C. A. 2d Cir.), which was based on the earlier decision of the same court in Taylor v. United States, 152 Fed. 1, 4. In our opinion it was not meant by the reversal of the Taylor case to change the conclusion there reached in the majority opinion as to aliens re-entering this country with apparent intent to remain, 207 U. S. 120; Sibray v. United States, 185 Fed. 401, 402 (C. C. A. 3d Cir.); United States v. Sprung, 187 Fed. 903, 905, 906 (C. C. A. 4th Cir.); Prentis v. Petros Stathakos, decided April, 1911 (C. C. A. 7th Cir.), not yet reported. The decisions in Redfern v. Halpert, 186 Fed. 150 (C. C. A. 5th Cir.), and United States v. Nakashima, 160 Fed. 842 (C. C. A. 9th Cir.), are to the contrary.

The decision of this court in United States v. Aultman Co., 148 Fed. 1022, affirming the judgment of the court below, 143 Fed. 922, is not applicable. That was a prosecution for alleged violation of the law, which forbade and denounced with penalties any encouragement, through solicitation, promise or agreement, of the importation or immigration of aliens for the purpose of performing labor in this country. No question of deportation was involved. The marked difference to be observed between that case and this is, that there the action was against the company to recover the penalty inflicted for inducing an alien to come here; while this is a proceeding to deport an alien. The statute there considered disclosed an intent to protect American labor against foreign pauper labor, and the act of the Aultman Company was regarded under all the circumstances as not falling within the intention of the law. We think it plain that the learned judges taking part in the case—the judge deciding it below and the judge affirming it alone upon his opinion—could not have thought it necessary even to consider the question with which we are now concerned. (See United States v. Williams, 183 Fed. 905.)

In view of the changes made in the statutes and the ends sought to be accomplished under them—which, for example, are so clearly and cogently stated by Judge Lacombe in Taylor v. United States and Ex parte Hoffman—we are constrained to believe that those decisions and their class, when applied to the present statute, more certainly and completely effectuate the intention of Congress than the two opposing decisions do. The power and duty vested in the Department to exclude and to deport objectionable aliens are in their nature continuing. The only limitation stated is that deportation shall take place within three years. This is plainly meant to enable the officials to determine the fitness of aliens admitted. Aliens of fitness may, however, leave the country and return later in a condition and under circumstances that would obviously present the very evils which the act was passed to remedy. Such new conditions and new entry as clearly fall within the letter and purpose of the enactment as the same conditions and an original entry admittedly do.

It is true that to apply to the present case the rule laid down in the majority decisions is, as respects the time of Lewis' absence, to subject the rule to a severe test. Lewis was in Windsor only about an hour; but unless we decline to recognize the charges contained in the warrant of deportation, we must hold that when Lewis
46 re-entered Detroit, he was engaged in the execution of a scheme that was plainly violative of the alien act. He was not returning from the discharge of a temporary and lawful errand; and, having no such question as that before us, we do not pass upon it. If we yield then to the mere duration of Lewis' absence, we must grant to that feature greater importance than we do to the conditions attending his re-entry and to the intention of the law itself.

It is to be observed that under Section 21 the Secretary's power to deport is in terms vested when he is satisfied that an alien is here "in violation of this act." It needs only to be stated that if we are right in believing (upon the charges) that Section 2 is applicable, Lewis' re-entry and his remaining here were "in violation of this act." Haw Moy v. North, 183 Fed. 91 (C. C. A. 9th Cir.); Ex parte Avakain, 188 Fed. 690, s. c. ibid, 694; Williams v. United States, 186 Fed. 479, 481 (C. C. A. 2d Cir.). See also the Japanese Immigrant Case, 189 U. S. 86, 99; Turner v. Williams, 194 U. S. 281, 290.

It remains to consider whether the power to deport under Secs. 2 and 21 just passed upon, is affetced by anything contained in Sec. 3. The case (Wong You v. United States, 181 Fed. 313), relied on in the court below in connection with the holding that a conviction of Lewis under Sec. 3 was a condition precedent to the right to deport him, was reversed by the Supreme Court, January 22, 1912. After stating in the decision of reversal that the court below had "made a mistaken use of its principles of interpretation," the Supreme Court decided that where provision is made in each of two acts of Congress for excluding aliens, the right to exclude may be exercised under the later act. Aside from the rule of re-entry before considered, we regard this as decisive of the existence of the

power to deport under Secs. 2 and 21, irrespective of Sec. 3; for the rule of that decision is clearly equivalent to holding that the provisions of either act there considered might have been resorted to for the purpose of exclusion, and so clears the way to inquire into the real scope and effect of Sec. 3.

We are convinced that the right to deport in this case may be found also in Sec. 3 in connection with Sec. 21, without regard to conviction or acquittal under Sec. 3 alone. Obviously no difference in principle can arise from the fact that two courses are open in the same act, instead of being found in two acts.

47 Besides, Sec. 2 in terms is limited to aliens and Sec. 3 is not. For example, the first clause of Sec. 3 by general language forbids "importation" of any alien for the purpose of prostitution or other immoral purpose; and the next clause—the one corresponding to a clause of Sec. 2—provides that "whoever shall * * * import or attempt to import * * * any alien for the purpose of prostitution or for any other immoral purpose," may be punished. Clearly a citizen as well as an alien is embraced within this language. This is fortified by a later clause of the section; for while the forbidden acts are denounced and punished as felonies, yet the distinction between citizen and alien is consistently carried out in the last clause, which provides that "any alien who shall be convicted under any of the provisions of this section shall, at the expiration of his sentence" be deported. It follows, we think, that the fact that two corresponding clauses are found in Secs. 2 and 3 plainly signifies an intent (in connection with Sec. 21), to create and maintain two distinct remedies under which the right to deport may be exercised.

The judgment of acquittal of Lewis under the indictment returned is not res adjudicata of the present proceeding. Williams v. United States, 186 Fed., 479, 481, (C. C. A., 2d Cir.). Alluding to the charge relating to the woman, the learned trial judge said:

"The jury found Lewis not guilty. From my familiarity with the evidence, I can say I think the evidence, as fully developed on the trial (it being, in a substantial way, the same as the evidence before the Department) justified a strong suspicion that Lewis was guilty, but did not justify a conviction under the rules of criminal law. The case is one where the courts could not review the conclusion of the Department, if the Department has jurisdiction to hear such question at all."

It results that the right to deport in virtue of Sec. 21 is also applicable under Sec. 3. For one of the charges made by the Secretary of Commerce and found to be true in the warrant to deport is, that Lewis "imported and brought into the United States a woman for an immoral purpose;" and this is expressly "forbidden" by the first clause of Sec. 3.

48 Turning to the warrant to deport, it states that Lewis shall be returned to Russia, not to Canada. Secs. 20 and 21 each provide for return "to the country whence he came." In United States v. Redfern, 186 Fed., 603, 604, a native of Spain, who was then a citizen of the Republic of Panama, was held under a warrant ordering his deportation to Spain. It was decided that the Secre-

tary had "no discretion whatever in the matter, and any warrant that attempts to exercise such discretion is necessarily illegal and void," and the writ of habeas corpus was made absolute for that reason. In United States v. Williams, 187 Fed., 470, 471, a person who came to this country from Holland was arrested on his return from Canada and held under a warrant to deport him to Austria, and the writ was dismissed on the ground that the detention was legal and the court had no jurisdiction to direct the Secretary to send him to Canada. We are thus required to ascertain the statutory intent of the words "returned to the country whence he came." Under Sec. 3 an alien whose sentence has expired may be "returned to the country whence he came, or of which he is a subject or a citizen." This is the latest expression of the legislative intent in this regard. Sec. 3 also provides for the deportation of another class of aliens "in the manner provided by sections 20 and 21 of this act." It is difficult to perceive the reason for this difference in language, unless it was the intention of Congress to invest the Secretary in all cases with the discretion given to him by Sec. 3; for aliens subject to deportation may frequently have come here from a country other than the one of their nativity or citizenship, no matter into what clause of the act their cases may fall. Without considering this, however, we think the history of the words contained in sections 20 and 21—as respects their relations to the other portions of the original act and the amendments thereto—shows that the words "returned to the country whence he came" were intended to refer to the place of nativity or citizenship. In the absence of provision or change of provision clearly indicating a different intent, it hardly can be said that it was the legislative purpose otherwise to deport objectionable aliens. This meaning should be ascribed to the words now.

The judgment of the court below must be reversed, and appellee remanded to the custody of appellant.

49 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of G. Oliver Frick, United States Immigration Inspector vs. Samuel Lewis, No. 2200, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 9th day of March, A. D. 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit,
By ARTHUR B. MUSSMAN,
Deputy Clerk.

50 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which G. Oliver Freck, United States Immigration Inspector in charge, is appellant, and Samuel Lewis is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Eastern District of Michigan, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed
51 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals For the Sixth Circuit, *ss:*

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 19th day of April, 1912, there was filed in my office a stipulation in the above entitled case in the following words towit:

"Supreme Court of the United States, October Term, 1911.

No. 1010.

SAMUEL LEWIS, Petitioner,
vs.
G. OLIVER FRICK, U. S. Immigration Inspector in Charge.

Stipulation as to Return.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record and

proceedings in the Circuit Court of Appeals for the Ninth [sic] Circuit, now on file in the Supreme Court of the United States, may be taken as the return of the Clerk of the Circuit Court of Appeals to the writ of certiorari issued herein.

PHILIP T. VAN ZILE,
Counsel for the Petitioner.
F. W. LEHMAN,
Solicitor General.

April 15, 1912.

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

Witness my official seal and signature and the seal of the United States Circuit Court of Appeals at the city of Cincinnati in said Circuit this 19th day of April, 1912.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk U. S. Circuit Court of Appeals for the Sixth Circuit.

52 [Endorsed:] File No. 23,086. Supreme Court of the United States, No. 1010, October Term, 1911. Samuel Lewis vs. G. Oliver Frick, U. S. Immigration Inspector. Writ of Certiorari. No. 2200. Filed Apr. 17, 1912. Frank O. Loveland, Clerk.

53 [Endorsed:] File No. 23,086. Supreme Court U. S. October Term, 1911. Term No. 1010. Samuel Lewis vs. G. Oliver Frick, U. S. Immigration Inspector. Writ of certiorari and return. Filed April 22, 1912.

208 5

Supreme Court of the United States

October Term, 1911.

No. [illegible]

Office Supreme Court, U. S.
FILED
MAR 18 1912
JAMES H. McKENNEY,
CLERK.

Samuel Lewis,
Petitioner,
vs.
G. Oliver Frick, United States Immigration Inspector, in Charge,
Respondent.

Petition for Writ of Certiorari from the Supreme Court of the United States to the United States Circuit Court of Appeals, Sixth Circuit.

Philip T. Van Zile, *Counsel.*

Frederic S. Fleming,
Guy W. Moore,
H. P. Wilson,
Attorneys and of Counsel for Petitioner.

Detroit:
[illegible] Printing Co., [illegible]
1912.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

SAMUEL LEWIS,
Petitioner,
vs.
G. OLIVER FRICK, United States Immigration Inspector, in Charge,
Respondent.

Petition for Writ of Certiorari, requiring the Circuit Court of Appeals for the Sixth Circuit to certify to the Supreme Court for its review and determination the case of Samuel Lewis, appellant, vs. G. Oliver Frick, United States Immigrant Inspector, in Charge, respondent.

The petition of Samuel Lewis respectfully shows to this Honorable Court as follows:

First. Your petitioner is a person of Jewish ancestry and a natural born subject of the Czar of Russia; but is now, and since September 20, A. D. 1904, has been, a resident of the United States of America and of no other country, having his domicile in the City of New York in the State of New York, and in the City of Detroit in the State of Michigan, where his domicile now is; and during all that time he has been engaged in lawful employment and has been self-supporting and law-abiding. He entered the United States at the port of New York in the State of New York on, to-wit, the said 20th day of September, A. D. 1904, then and there regularly passing immigration inspection.

Second. Your petitioner on the 16th day of May, 1906, declared his intention to become a citizen of the United States, as appears in the record as filed in this case in Circuit Court of Appeals, Sixth Circuit.

Third. Your petitioner, on the 17th day of November, A. D. 1910, and after a continuous residence of more than six years in the United States crossed the Detroit River at Detroit, Michigan, to Windsor, On-

tario, in the Dominion of Canada, with the intention of returning as soon as possible, and did re-cross the river and return to the United States on the afternoon of the same day, November 17, 1910, after less than one hour's absence from the United States.

Fourth. Your petitioner, on re-crossing the Detroit River and returning to the United States, on November 17, 1910, was subjected to an examination by the United States immigration inspector in charge at Detroit, Michigan, and was permitted to re-enter the country and return to his established domicile in the said City of Detroit, in the State of Michigan; but the said United States immigration inspector in charge at the Detroit port, after having allowed your petitioner to return to his established domicile as aforesaid, on to-wit the 24th day of November, 1910, caused your petitioner to be arrested upon a department (telegraphic) warrant of arrest issued out of the Department of Commerce and Labor of the United States, dated November 23, 1910, charging that your petitioner is an alien; that he entered the United States on November 17, 1910, at the port of Detroit, Michigan, via the Grand Trunk Railroad; that he has been convicted of, or admits having committed, a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he procured, imported or brought into the United States a prostitute, or woman, or girl for the purpose of prostitution or other immoral purposes; that at the time of his entry into the United States he was a person likely to become a public charge; that he is unlawfully within the United States; and that he entered without the inspection contemplated by law.

Fifth. Your petitioner further shows unto this Honorable Court that, in December following, he was indicted by the grand jury for violation of Section 3 of the immigration law as amended March 26, 1910, the sole charge being that on November 17, 1910, he imported into the country a woman for an immoral purpose, which said indictment duly came on to be tried in the District Court of the United States for the Eastern District of Michigan, Southern Division, March 23, 1911, and the trial jury rendered a verdict of not guilty; that thereafter, on to-wit the 13thday of April, A. D. 1911, your petitioner filed a petition in the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, for a writ of habeas corpus to obtain his discharge from detention, alleging, inter-alia,

that he was a lawful resident of the United States, having continuously maintained a domicile in the United States since his entry at the port of New York in the State of New York, on to-wit September 20, 1904, when he was then and there examined and admitted by the United States immigration inspector at that port; that the said acting Secretary of the Department of Commerce and Labor was without authority to make and enforce the order and warrant for deportation for the reason that your petitioner is a lawful resident of the United States, and as such not subject to the surveillance and control of the immigration inspectors or the Department of Commerce and Labor; that your petitioner's detention and imprisonment under said warrant of deportation is against public policy and contrary to the laws of the United States guaranteeing to all lawful residents thereof the right, privilege and benefits properly appertaining and accruing to petitioner under the Constitution and the laws of the land, and that your petitioner has not been committed and is not detained by virtue of any judgment, decree or process issued by a tribunal of competent jurisdiction upon which to base an order or warrant of deportation; that the Department of Commerce and Labor and the acting secretary thereof were without jurisdiction to hear and determine your petitioner's rights in the premises, and that the sole and exclusive jurisdiction thereof was in a justice, judge or commissioner of the United States courts.

The writ was issued directed to G. Oliver Frick, United States immigrant inspector in charge, who produced the body of your petitioner before the said court on the 14th day of April, A. D. 1911, and made answer to the petition for the writ alleging that your petitioner was on the 24th day of November, A. D. 1910, placed under arrest by virtue of warrant of the Department of Commerce and Labor; that your petitioner had full and complete hearing upon said warrant for apprehension, and on the 14th day of February, A. D. 1911, the Secretary of Commerce and Labor made a finding upon the evidence taken in said cause and pending before said Secretary of Commerce and Labor, and adjudged that your petitioner is a member of the excluded classes, in that he has been convicted of or admitted having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he procured, imported and brought into the United States a woman for an immoral purpose;

that at the time of his entry into the United States he was a person likely to become a public charge, and that he is unlawfully within the United States, in that he secured admission by false and misleading statements, thereby entering without the inspection contemplated by law, and issued an order thereon that your petitioner be deported to the country from whence he came, to-wit, Russia; that by virtue of said warrant respondent held your petitioner for the purpose of deportation, and that the matter was within the exclusive jurisdiction of said Secretary of Commerce and Labor and not within the jurisdiction of the Court. The said cause was and is entitled and numbered in the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, "Samuel Lewis vs. G. Oliver Frick, Immigration Inspector, Respondent, No. 243."

Sixth. The case was heard and determined by the said Circuit Court upon undisputed facts appearing in petition and return as herein before recited, which said facts were commented on and incorporated in "Opinion of the Learned District Judge," as appearing in the Record in said case in the Circuit Court of Appeals, Sixth Circuit.

Seventh. Such proceedings were had in the said cause in the said Circuit Court of the United States, that on the 20th day of April, A. D. 1911, the said court rendered a judgment therein as follows:

OPINION.

"In the
CIRCUIT COURT OF THE UNITED STATES
For the Eastern District of Michigan,
Southern Division.

Lewis,
Petitioner,
vs.
Frick,
Immigration Inspector, *Respondent.*

"The petitioner, Samuel Lewis, came from Russia to this country, entering at the port of New York, and regularly passing inspection on September 20th, 1904. He lived in, or in the vicinity of, New York, until March, 1910, when he came to Detroit, where he has since made his home, and worked as a painter and paperhanger, and

it is undisputed that he was industrious and orderly and in no trouble until November 17th, 1910. On that day he went across the river from Detroit to Windsor, remaining not more than an hour or so, and brought back with him, into the United States, a woman claimed to be his wife. On this occasion he made to the immigration officers a statement as to the woman and her recent history, some part of which statement was concededly untrue. In December following, he was indicted by the grand jury for violation of Section 3 of the Immigration law, as amended March 26th, 1910, the sole charge being that in bringing this woman across the river on November 17th, she was, by him, imported for an immoral purpose. This indictment duly came on to be tried in the District Court of this district, and on March 23rd, 1911, the trial jury rendered a verdict of not guilty.

"On November 24th, 1910, he was arrested by an immigration inspector upon a warrant of arrest issued by the Department of Commerce and Labor, and specifying, as its moving causes: (1) That he had been convicted of or admitted having committed a felony or other crime of misdemeanor involving moral turpitude prior to his entering the United States; (2) that he had brought into the United States a woman for immoral purposes; (3) that at the time of his entry (November 17th, 1910), he was likely to become a public charge; and (4) that he entered without inspection, and, hence, was unlawfully in the country. Certain hearings and examinations were held before the inspectors. Complaint is made concerning some features of these examinations, and it is said that he did not have a fair hearing or such hearing as the law requires. So far as concerns the main question of fact into which the Department undertook to examine, viz., the importing of the woman, I do not see sufficient ground for these complaints, and if the Department had jurisdiction, under the existing circumstances, to hear and determine this question of fact and to deport upon that ground, I should not undertake to review its conclusion.

"What I understand to be a complete file copy of the Department proceedings does not show any formal finding by the Department upon the charges made, but that is, probably, not material, because on February 14th, 1911, the Secretary of Commerce and Labor issued his warrant of deportation, reciting that, after due hearing, he had become satisfied that Lewis, who landed at Detroit, Michigan, from Canada, November 17th, 1910, was

in this country in violation of the Immigration law as amended March 26th, 1910, in this, to-wit:

"That the said alien was a member of the excluded classes in that he has been convicted of and admits having committed a felony or other crime or misdemeanor, involving moral turpitude prior to his entry into the United States; that he procured, imported and brought into the United States a woman for an immoral purpose; that at the time of his entry into the United States he was a person likely to become a public charge; and that he is unlawfully within the United States in that he secured admission by false and misleading statements thereby entering without the inspection contemplated by law; and may be deported in accordance therewith.

"Thereupon, the warrant directed that he be taken to New York and be from there deported to Russia.

"February 28th, the Department directed that his deportation be stayed until he was released by the court authorities in connection with the pending indictment. March 23rd, Mr. Frick was authorized to stay deportation for ten days further to enable Lewis to submit additional information. Lewis, by his attorneys, submitted to the Department, at Washington, a showing that he had been acquitted on the indictment and also some character evidence. April 13th, and it is to be assumed after this additional showing, the secretary withdrew the stay and directed Mr. Frick to execute the warrant immediately.

"Thereupon, a writ of habeas corpus was allowed from this court, Mr. Frick appearing in person, and by the United States District Attorney, makes return. The foregoing facts and others to be hereafter mentioned, appear without dispute either from the petition and return or from the statements made by Mr. Frick and the District Attorney in open court upon the hearing.

"The immigration inspector insists that this court is without jurisdiction to make the inquiry which will be necessary in order to release the petitioner from custody, while the petitioner insists that the Department was without jurisdiction to issue the warrant.

"It is entirely clear that when the petitioner, in such case, is an alien, and when the right to deport him depends upon a question of fact and when there has been a hearing by the Department of that question, such hearing being upon disputed evidence, and the conclusion of the Secretary is based upon some evidence, such conclusion cannot be reviewed by the courts, and if the fact so

found does, in law, justify the deportation, it must proceed, however mistaken the conclusion of the Department may seem to the court to have been. On the other hand, it is equally clear that errors of law, by the Department, may be reviewed by the courts; that an erroneous conclusion of law, made by the Department, cannot be sustained by being mistakenly called a conclusion of fact; that a conclusion of fact based upon no evidence tending to support it is of no force, and the hearing at which no evidence is introduced is no hearing; and that the Secretary's authority for deportation must be found in the statute.

"Except as to the charge as to the woman, all the charges depend upon the theory that Lewis' entry into the United States was on November 17th, 1910. I think this is a wholly mistaken theory, on the undisputed facts. There has been a great diversity of holding under varying circumstances, as to the effect of a temporary return to his native country by an alien who had established a domicile in this country. Sometimes it is quite clear that the return therefrom to this country must be considered a new entry, and sometimes whether a new entry might be a question of fact; but I find no case supporting the theory that where an alien has an established residence and occupation in this country which has extended, as in this case, for six years, and where he crosses the border, not into his native country, but into another foreign country, and so crosses for a mere temporary purpose, and returns within an hour, particularly at a point like the Detroit-Windsor crossing, where hundreds are crossing and re-crossing every day, I find no support for the theory that the return in such case can be considered as the entry to which the immigration laws relate.

"It is conceded that the charge relating to have been convicted of or admitting a felony or other crime or misdemeanor, has no basis whatever, excepting that two or three years before coming to Detroit and after he had been two or three years in this country, Lewis was arrested by the New York police on the charge of house breaking, that this charge was withdrawn and a charge of disorderly conduct placed against him, and that to this he pleaded guilty (or perhaps was convicted) and paid a fine of ten dollars. It is further said, that at about the same time and in Atlantic City, Lewis was convicted as a disorderly person and paid a small fine. It does not appear, however, that this Atlantic City charge

was ever brought to Lewis' attention in the Department proceedings. As to the New York City charge, Lewis insisted from the beginning that he was guilty of nothing and did not know what he was arrested for and paid a fine because he was ordered to. In this matter, the Department may suspect that Lewis was guilty of housebreaking or that he was consorting with thieves and burglars, but he has neither admitted nor been convicted of any such thing. Certainly there is no basis for the idea that disorderly conduct, fined ten dollars, is a 'crime or misdemeanor involving moral turpitude;' any more than is the case of carrying concealed weapons, considered by Circuit Judge Ward in ex parte Saraceno, 182 Fed. Rep., 955. Jurisdiction to deport cannot rest on this charge; and this without regard to the date of the offense, which was long after Lewis' actual entry into the United States. The latter consideration alone would end the question.

"As to the accusation that at the time of his entry he was likely to become a public charge, it is to be noted, first, that this has to do with his actual entry in 1904, as to which no claim is made and no proof taken; second, that at the time of the Windsor-Detroit crossing, he was ablebodied, industrious and self-supporting and nobody has suggested the contrary; and, third, that the proposition advanced by the Department as the only one upon which this claim was ever thought to rest is that inasmuch as he was bringing in a woman contrary to law, he was likely to be arrested and convicted and imprisoned and so become a public charge. It therefore appears that this element of his offense is collateral to the other or importing charge and must stand or fall therewith, even if it could otherwise have force.

"The final ground recited is that he procured admission by false and misleading statements. It is conceded by the inspector that this relates wholly to the Windsor-Detroit admision of November, 1910, and on this subject, it is to be observed, first, that this was not the time of his admission to the country; second, that his alleged false and misleading statements related wholly to the woman and had nothing to do with himself or his right to admission; and, third, that if their falsity had been discovered when made, he would, nevertheless, have had a perfect right to return to his domicile in Detroit. This ground of deportation, obviously, cannot stand on its own merits and is collateral to the charge of importation.

"This leaves for consideration only the last named

charge, viz., that relating to the woman. The jury found Lewis not guilty. From my familiarity with the evidence, I can say, I think the evidence, as fully developed on the trial, (it being, in a substantial way, the same as the evidence before the Department), justified a strong suspicion that Lewis was guilty, but did not justify a conviction under the rules of criminal law. The case is one where the courts could not review the conclusion of the Department, if the Department has jurisdiction to hear such question at all. However, I am unable to find in the Immigration law any authority whatever for deporting an alien because he has imported a woman for immoral purposes. Such importation might be fully proved, or, indeed, might be admitted by the alien, and still the Department would have no jurisdiction to deport. It has such jurisdiction only under Section 3, and that exists only in case of conviction.

"I am led to this conclusion by study and comparison of Sections 2 and 3. Section 2 excludes from admission into the country a person who attempts to bring in a woman for immoral purposes. In terms, it applies only to excluding one who is attempting to get in, but it has been construed to be effective, by relation, in deporting those who had entered; and I accept that construction. Whether it could, in any event and standing by itself, be a basis for deporting an alien who had established and maintained a domicile in this country for six years, and in a case where the offense had nothing to do with the entry of the person to be deported, it is not necessary in this case to decide.

"By Section 3, Congress has provided that where the woman imported is an alien and the person importing is an alien, a felony is committed; and that the person who is convicted of this felony may be deported. Under the general rules of statutory construction (Noyes, C. J., in Wong Tun vs. U. S., 181 Fed., 313), the intent seems clear that out of the general class covered by Section 2, Congress has selected a particular class named in Section 3, and submitted it to a severe punishment, but, in connection therewith, has limited the right to deport to cases where there is a conviction.

"The right to prosecute criminally and the right to deport are inconsistent, as concurrent rights; they cannot both be exercised at the same time; Congress saw the necessity of making the proceedings successive; and it clearly, and probably purposely, made the second step depend on the result of the first step.

"The conclusion is inevitable that the deportation warrant is void and that the petitioner should be discharged. An order may be entered accordingly; but the discharge may be stayed for a further period of ten days to enable the District Attorney to perfect an appeal, if desired.

"Dated April 20, 1911.

ARTHUR C. DENISON,
United States District Judge.
Sitting by Designation."

Eighth. The said case of your petitioner in the said Circuit Court of the United States, was heard before and decided by the Honorable Arthur C. Denison, United States District Judge, sitting in the said court by designation and the opinion of the court was delivered by him.

Ninth. Your petitioner further shows that on the 8th day of May, 1911, there was duly allowed by the said Circuit Court on appeal from its said judgment to the United States Circuit Court of Appeals for the Sixth Circuit and a transcript of the record and all proceedings was transmitted to the said United States Circuit Court of Appeals.

Tenth. That on the thirteenth day of July, A. D. 1911, a certified transcript of the record and of all proceedings of the said Circuit Court in the said case was filed in the United States Circuit Court of Appeals for the Sixth Circuit and said case was entered and docketed in the said Court of Appeals and entitled G. Oliver Frick, United States Immigrant Inspector, in charge, vs. Samuel Lewis, appellee, No. 2200, the assignment of errors filed on behalf of appellee were as follows:

1. The court erred in sustaining the petition of said Samuel Lewis for a writ of habeas corpus.

2. The court erred in ordering petitioner, Samuel Lewis, discharged from custody.

3. The court erred in holding that said court had jurisdiction to hear and determine the matters and things set forth in said petitioner's petition.

4. The court erred in holding that the Secretary of Commerce and Labor was without jurisdiction to issue his warrant of deportation for the said Samuel Lewis.

5. The court erred in holding that the warrant of deportation issued by the Secretary of Commerce and Labor was void.

6. The court erred in holding that petitioner's entry into the country was on the 20th day of September, A. D.

1904, and that by his leaving the country for Windsor, Canada, and staying for a brief period on the 17th day of November, A. D. 1910, that his return did not constitute an entry within the meaning of section two of the amendment to the Immigration laws passed and approved March 26th, 1910.

7. The court erred in holding that by Section 3 of said act, it is necessary, before an alien can be deported because of his importing alien women for illegal purposes, that he be first convicted of the criminal offense as provided for in Section 3.

8. The court erred in holding that Congress has limited the right to deport to cases where a conviction has been had, and for other purposes appearing in the record.

Eleventh. That the case came on to be heard in said Circuit Court of Appeals on the 10th day of January, 1912, before John W. Warrington, Loyal E. Knappen, circuit judges, and John M. Kilits, district judge, and on the 13th day of February, 1912, said court rendered a judgment reversing the said judgment of the said Circuit Court, on the following grounds:

A. That the Windsor-Detroit entry constituted a reentry into the United States to which the Immigration laws relate and that a continued established domicile and occupation in the United States for six years immediately following a lawful entry, when the alien was regularly admitted after having passed immigration inspection does not operate to remove the alien from that class as provided in Section 21 of the Immigration Act 34, Stat at Large, page 905, vesting power in the Secretary of Commerce and Labor to deport an alien who has been found here in violation of the act within three years after landing or entry and to return him to the country whence he came.

B. That the right to deport in this case may be found also in Section 3, in connection with Section 21, without regard to conviction or acquittal under Section 3 alone.

C. That provisions in Acts 20 and 21 of the Immigration Law providing for return "to the country whence he came," refers to place of nativity and citizenship regardless of fact that entry with reference to which it is sought to deport alien relates to another foreign country.

A certified copy of the entire record in the case, in the said Circuit Court of Appeals, is furnished and hereto annexed as a part of this application in conformity with

Rule 37 of this court relative to cases from Circuit Court of Appeals and the same is marked Exhibit A.

Twelve. Your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals in said case is erroneous and that this Honorable Court should require said case to be certified to it, for its review and determination under and in conformity with the provisions of the 6th Section of the Act of Congress, entitled "An act to establish Circuit Court of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, the said case being made final in the said Circuit Court of Appeals by said Act.

Thirteenth. That the learned Circuit Judge in the Circuit Court of Appeals, in his opinion, makes mention of the fact and your petitioner is advised and believes that "There is a diversity of judicial opinions upon the subject of temporary absence of an alien from this country and his re-entry and your petitioner is advised and believes that there is a diversity of judicial opinions on the question as to the country to which an alien may be deported, under the provisions of the Immigration law providing for return "to the country whence he came," when after a temporary absence such alien re-enters the United States from another foreign country other than the country of his nativity and citizenship and it is with reference to such re-entry that the order for deportation is made.

Fourteenth. That your petitioner is advised and believes that the purpose of vesting in the Supreme Court supervisory jurisdiction was to secure uniformity of decision and to avert diversity of judgments among the several circuits and that therefore it is of great importance and of much consequence that the entire Record in this case in the Circuit Court of Appeals, involving numerous questions upon which there is a diversity of judicial opinion, and which have never been before this Honorable Court, should be certified to it for its review and determination.

Fifteenth. The importance and gravity of the questions here involved and which your petitioner respectfully requests this Honorable Court to review and determine, is obvious when we contemplate the thousands of aliens who are annually coming to this country, and the rights under our Constitution and Treaties of the

millions who have long established domiciles in the country, and have acquired education, property rights and social standing here.

Sixteenth. Your petitioner thus respectfully submits that the question upon the legal and just construction of the several sections of the Immigration Act of February 20, 1907, as amended March 26, 1910, involved in, and presented by the case of your petitioner, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the court of the merits of said questions on the part of the petitioner and the respondent herein.

Your petitioner believes that the aforesaid judgment of the Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled G. Oliver Frick, United States Immigration Inspector in Charge, appellant, vs. Samuel Lewis, appellee, No. 2200, to the end that the said case may be reviewed and determined by this court as provided in section 6 of the act of Congress, entitled, "An act to establish Circuit Court of Appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

PHILIP T. VAN ZILE,
Counsel for Petitioner.

FREDERIC S. FLORIAN,
GUY W. MOORE,
H. P. WILSON,
Attorneys and of Counsel for Petitioner.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

SAMUEL LEWIS, PETITIONER,
v.
G. OLIVER FRICK, UNITED STATES IMMIGRATION INSPECTOR IN CHARGE. } No. 1010.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

STATEMENT.

This was an application to the Circuit Court for the Eastern District of Michigan for a writ of habeas corpus to obtain the discharge of petitioner from the custody of the immigration inspector, who held him under a warrant of deportation issued by the Secretary of Commerce and Labor.

Petitioner came to this country originally from Russia, entering at the port of New York on September 20, 1904, and lived in the vicinity of New York until March, 1910, when he went to Detroit, where he has since made his home (R., 23). November 17, 1910, he went across the river from Detroit to Windsor and brought back with him into this country a woman,

claimed to be his wife (ib.). He was subsequently indicted for bringing this woman into the country for immoral purposes, in violation of section 3 of the immigration act, but was acquitted March 23, 1911 (ib.).

Before the institution of the criminal proceedings, petitioner had been arrested upon warrant of the Secretary of Commerce and Labor in connection with the importation of this woman, and, on February 14, 1911, after a fair hearing, had been ordered deported by the Secretary, who held that he was in the country in violation of the immigration law as amended March 26, 1910, in this, to wit (R., 24):

> That the said alien was a member of the excluded classes in that he has been convicted of and admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States; that he procured, imported, and brought into the United States a woman for an immoral purpose; that at the time of his entry into the United States he was a person likely to become a public charge; and that he is unlawfully within the United States in that he secured admission by false and misleading statements thereby entering without the inspection contemplated by law; and may be deported in accordance therewith.

It was contended in the petition that the Secretary of Commerce and Labor had no jurisdiction to deport petitioner because he was a lawful resident

of this country, having been admitted by the immigration authorities on September 20, 1904. (R., 2.)

Some of the evidence and concessions before the Circuit Court are not in the record, but it was agreed (R., 22) that the facts may be considered as stated by that court in its opinion. (R., 22–30.)

The Circuit Court found the charges against the alien, except the one as to the importation of the woman, to be collateral to and to depend upon that charge or to be without any foundation. (R., 25–27.)

In regard to the contention that petitioner did not receive a fair hearing, the court said (R., 23):

> * * * Certain hearings and examinations were held before the inspectors. Complaint is made concerning some features of these examinations, and it is said that he did not have a fair hearing or such hearing as the law requires. So far as concerns the main question of fact into which the department undertook to examine, viz, the importing of the woman, I do not see sufficient ground for these complaints, and if the department had jurisdiction, under the existing circumstances, to hear and determine this question of fact and to deport upon that ground, I should not undertake to review its conclusion.

The Circuit Court held that, under the circumstances stated, the Secretary was without jurisdiction to deport petitioner, and directed his release. (R., 30, 31.) Upon appeal, the Circuit Court of Appeals reversed its judgment.

ARGUMENT.

I.

As to whether the immigration laws apply to domiciled aliens seeking to reenter the country.

There is some conflict of decision among the Circuit Courts of Appeals upon the question whether the present immigration act applies to aliens who have acquired a domicile in the United States and who seek to reenter the country after a temporary absence abroad. The great weight of authority is in line with the decision of the Circuit Court of Appeals for the Sixth Circuit in this case, that it does apply to them. It has been so held by the Circuit Court of Appeals for the Second Circuit in *Taylor* v. *United States* (152 Fed., 1) and *Ex parte Hoffman* (179 Fed., 839); by the Circuit Court of Appeals for the Third Circuit in *Sibray* v. *United States* (185 Fed., 401); by the Circuit Court of Appeals for the Fourth Circuit in *United States* v. *Sprung* (187 Fed., 903); and by the Circuit Court of Appeals for the Seventh Circuit in *Prentis* v. *Stathakos* (192 Fed., 469). There is also a decision by a District Court in the Eighth Circuit to the same effect. (*Ex parte Petterson*, 166 Fed., 536.)

There are only two decisions of the Circuit Court of Appeals to the contrary, one by the Circuit Court of Appeals for the Ninth Circuit (*United States* v. *Nakashima*, 160 Fed., 842) and one by the Circuit Court of Appeals for the Fifth Circuit (*Redfern* v. *Halpert*, 186 Fed., 150), one Judge dissenting.

That the present immigration law applies to domiciled aliens seeking to reenter the country is to be inferred from the action of Congress in changing the law, which formerly applied only to an "alien immigrant," so as to make it apply to any alien, the word "immigrant" being omitted. That the change was made advisedly by Congress appears from the opinion of the Circuit Court of Appeals for the Second Circuit in the Hoffman case, where it was said (179 Fed., 840–841):

> The single question presented is whether the provisions of the act of 1907 apply to an alien, who after original entry into this country has remained here more than three years, and then, after a brief absence abroad, again seeks to enter the United States. We had this question of construction of act March 3, 1903, c. 1012, 32 Stat., 1213 (which is in this particular substantially the same as the act of 1907), before us in Taylor *v.* United States (152 Fed., 1; 81 C. C. A., 197), and do not think it necessary to repeat the long discussion which will be found in that opinion. We referred in that case to the history of the act as disclosed in the Congressional Record. It therein appeared that the question whether the new act should, like the original one of March 3, 1891, (26 Stat., 1084, c. 551 [U. S. Comp. St. 1901, p. 1294]), be restricted to alien immigrants, or should be broadened so as to cover aliens, whether immigrants or not, was thoroughly discussed in Congress. As the bill left the House it was broadly phrased.

> The Senate amended it in several particulars, so as to restrict its operation to immigrants. Upon conference, however, the House nonconcurred in these amendments, and the Senate withdrew them. We held that these proceedings clearly indicate that Congress was satisfied that the use of the word "immigrant" had given rise to a construction of the earlier acts which rendered them inadequate to accomplish their purpose, and made it necessary to adopt the broader term "alien." The Taylor case was reversed by the Supreme Court (207 U.S., 120; 28 Sup. Ct., 53; 52 L. Ed., 130), the court holding that the facts did not warrant a conviction (under section 18 of the act) of the captain of a vessel from which one of the ship's crew had deserted while in this port; but we find nothing in the opinion of the Supreme Court which indicates that this court was in error in holding that, despite its title, the excluding sections of the act applied to aliens generally, and not solely to alien immigrants.

In *Lem Moon Sing* v. *United States* (158 U. S., 538) this court, speaking by Mr. Justice Harlan of the reentry of a domiciled alien, said (p. 547):

> * * * Is a statute passed in execution of that power [to exclude aliens] any less applicable to an alien, who has acquired a commercial domicile within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reenter it? We think not. The words of the statute are

broad and include "every case" of an *alien,* at least every Chinese alien, who, at the time of its passage, is out of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicile in this country.

II.

As to whether the Secretary of Commerce and Labor had jurisdiction to deport petitioner for importing a woman for immoral purposes, notwithstanding his acquittal of the charge in the judicial proceedings.

Section 2 of the immigration act (34 Stat., 898), as amended March 26, 1910 (36 Stat., 263), provides:

> "SEC. 2. That the following classes of aliens shall be excluded from admission into the United States: * * * persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; * * * .

By section 21 the Secretary has power to deport when he is satisfied that an alien is here "in violation of this act."

Section 3 also, in addition to prescribing punishment of fine and imprisonment for the importation of an alien for such purpose, provides—

> that the importation into the United States of any alien for the purpose of prostitution or for any other immoral purpose is hereby forbidden. * * *

The power to deport an alien entering the United States in violation of the immigration laws is in the

Secretary of Commerce and Labor; the power to punish any "person," whether an alien or not, for bringing in women or girls for immoral purposes is in the courts. The two jurisdictions are separate and distinct; hence, the action of the one can have no legal bearing upon the other, and there is nothing in the statute that suggests that Congress intended that an alien acquitted of a charge cognizable by both, but for different purposes, should not be subject to the jurisdiction of the other.

The decision of the Circuit Court of Appeals in this case, that the Secretary could deport petitioner notwithstanding his acquittal in the judicial proceedings, is supported by the decision of the Circuit Court of Appeals for the Second Circuit in *Williams* v. *United States* (186 Fed., 479), where it was held that the acquittal of an alien in a criminal prosecution for falsely claiming citizenship was not a bar to proceedings for deportation for having obtained admission into the United States in violation of the immigration laws by fraudulently representing himself to be a citizen.

As to whether there was evidence before the Secretary warranting the finding that the woman referred to was imported for immoral purposes, it is sufficient to quote from the opinion of the Circuit Court (R., 27):

> * * * The jury found Lewis not guilty. From my familiarity with the evidence, I can say I think the evidence, as fully developed on the trial (it being, in a substantial way, the same as the evidence before the depart-

ment), justified a strong suspicion that Lewis was guilty, but did not justify a conviction under the rules of criminal law. The case is one where the courts could not review the conclusion of the department, if the department has jurisdiction to hear such question at all.

III.

The Circuit Court of Appeals also held that, under the terms of the immigration act authorizing the alien to be "returned to the country whence he came," the warrant for the deportation of Lewis to Russia, the country of his nativity and from which he originally came, was valid. There is no decision to the contrary. Two cases in lower Federal courts are cited by the Circuit Court of Appeals (*United States* v. *Redfern*, 186 Fed., 603; *United States* v. *Williams*, 187 Fed., 470), but, as pointed out in its opinion, they are not in conflict with its conclusion.

Respectfully submitted.

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